

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 270 of 2020

(Arising out of order dated 27th January, 2020 in IBA/967/2019 passed by National Company Law Tribunal, Division Bench-I, Chennai)

IN THE MATTER OF:

Park Energy Pvt. Ltd.

Through its Authorised Representative

Mr. Hari Chaudhary

Shareholder of Bhadreshwar Vidyut Private Limited, an Indian inhabitant residing at No. 63 Govind Nivas Balaji Nagar, Mehta Venue, Padikuppam Road, Anna Nagar West Chennai Tamil Nadu Pin Code 600040.

**...Appellant
(Corporate Debtor)**

Versus

**1.Syndicate Bank,
Having its Stressed Asset Management
Branch at Door No. 15/38, SIC Building,
1st Floor, Anna Salai, Chennai, Tamilnadu-
600002.**

...Respondent No. 1 / Financial Creditor

**2.Bhadreshwar Vidyut Private Limited,
Through its Resolution Professional,
Jayashree S. Iyer having registration
No. (IBBI/IPA-002/IP- N00741/2018-
2019/12211 residing at C-15 Abhinav
Kailash, 19 A Velachery Road, Saidapet,
Chennai, Tamil Nadu-600015**

...Respondent No. 2

Present: -

**For Appellant: Mr. Ramji Srinivasan, Senior Advocate with
Mr. Puneet Singh Bindra, Mr. Gaurav Ray,
Mr. Akash Singh and Ms. Simran Jeet, Advocates.**

**For Respondents: Mr. Adarsh B Dial, Senior Advocate with
Mr. T. Ravichandran and Mr. K.V. Balakrishnan,
Advocates for R-1.
Mr. P.V. Dinesh, Advocate for RP
Ms. Jayshree S. Iyer, RP**

J U D G M E N T

(24th August, 2020)

Justice Anant Bijay Singh,

The instant Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 by Park Energy Pvt. Ltd. (Corporate Debtor) being aggrieved and dissatisfied by the order dated 27th January, 2020 passed by the Ld. Adjudicating Authority, National Company Law Tribunal, Division Bench- I, Chennai, whereby and whereunder the Ld. Adjudicating Authority admitted the application filed under Section 7 of the IBC and appointed Interim Resolution Professional.

2. **Brief facts of the case is as under: -**

i) The Corporate Debtor namely Bhadreshwar Vidyut Pvt. Ltd. (formerly known as OPGS Power Gujrat Pvt. Ltd.), is a company incorporated on April 26, 2007 under the provisions of the Companies Act, 1956, operates and develops power generation assets in India. The Corporate Debtor has set up a 2 x 150 MW Thermal Power Plant, at Bhadreshwar Kutch, Gujrat at a total project cost of Rs. 1996.54 Crores (hereinafter referred to as the "Power Plant"). For the purposes of setting up the Power Plant, the Corporate Debtor

had obtained a term loan aggregating to Rs. 1497.40 Crores, which included Rs. 998.26 Crores from REC Limited; Rs. 252.74 Crores from Punjab National Bank and Rs. 246.40 Crores from State Bank of India. The promoters of the Corporate Debtor had invested towards equity an amount of Rs. 499.14 Crores towards the Power Plant.

ii) The details of the Power Plant costs and its source have been given in a tabular form as under:

Particulars (Rs. Cr.)	Original Cost	Cost Overrun-1	Cost Overrun-II	Total Project Cost
Term Debt	1215.41	175.11	106.88	1497.40
REC Limited	810.27	116.74	71.25	998.26
SBI	200.00	28.81	17.59	246.40
PNB	205.14	29.56	18.04	252.74
Promoter Equity	405.14	58.37	35.63	499.14
Total Project Cost	1620.55	233.48	142.51	1996.54

iii. The Corporate Debtor completed the setting up of the Power Plant, in spite of the various delays and difficulties and the Power Plant began commercial operations from January 30, 2016 onwards. The delays were with respect to obtaining environment clearance, statutory clearance, aggregation of land, permission to obtain government lands, delay in set up by the State Transmission Utility and various cantankerous litigations. In order to part

finance the cost overrun incurred by the Corporate Debtor, there was an additional infusion of capital by the Promoters of the Corporate Debtor to the tune of Rs. 94.01 Crores.

iv) In order to meet the working capital requirement of the project, the Corporate Debtor entered into a Working Capital Consortium Agreement dated December 17, 2015 (the "WCCA") with Punjab National Bank (as the lead Bank), Indian Bank, Vijaya Bank, State bank of Hyderabad and Syndicate Bank (Respondent No. 1).

v) It is submitted that Respondent No. 1 has only 1.64% stake of the total value of debt owed by the Corporate Debtor to all the Financial Creditors that constitute the Consortium of Lenders.

vi) The Appellant submits that the PNB Consortium entered into an Inter-se Agreement dated December 17, 2015 amongst the consortium lenders and also executed an Inter-se Credit Agreement. As per this agreement the PNB Consortium lenders recognized PNB as the Lead bank and elected PNB as the lawful attorney of the PNB Consortium lenders.

vii) The Appellant submits that the PNB Consortium lenders have also entered into a Trust Retention Account (the "TRA") Agreement on July 26, 2016 with the Corporate Debtor and a Master Inter Credit Agreement (the "MICA") on July 26, 2016.

viii) The Appellant submits that it is pertinent to point out that Respondent No. 1 had sanctioned a total of Rs. 31 Crores by way of Fund based limits and Rs. 105 Crores by way of Non-fund based limits. After formation of the PNB

Consortium lenders, Respondent No. 1 had unilaterally reduced its sanctioned facilities. Moreover, Respondent No. 1 refused to release even the sanctioned limits and reduced the non-fund based limits from Rs. 105 Crores to 98 Crores vide their sanction letter dated July 29, 2017, and thereafter with effect from December 05, 2018, Respondent No. 1 had reduced its cash credit (fund based facilities) from Rs. 31 Crores to Rs. 7.92 Crores. Furthermore, Respondent No. 1 did not release funds from sanctioned non-fund based limits. Furthermore, the Letter of Credit ("LC") Limit was reduced to nil from Rs. 74 crores, so as the Bank Guarantee limit.

ix) This unilateral change effected by Respondent No. 1 caused enormous financial difficulty to the Corporate Debtor, in their day to day management of the business. The Appellant submits that this reduction by Respondent No. 1 was done, despite availability of non-fund based working capital limit and specific request made by the consortium members to open Letter of Credits for the Corporate Debtor. It is pertinent to note that the Corporate Debtor has regularly serviced the interest of the working capital facilities to the PNB Consortium till May 31, 2019.

x) On May 2, 2018, the Corporate Debtor requested Respondent No. 1 to open a letter of Credit for a sum of Rs. 21,25,36,500/- for purchasing coal. However, Respondent No. 1 refused to open Letter of Credit out of the sanctioned limit. This unilateral, arbitrary and non-cooperative approach of Respondent No. 1 caused grave financial difficulties and led to the classification of its account as Non-Performing Asset on June 30, 2018.

xi) The Appellant submits that there were several meetings of PNB Consortium lenders as well as all the Lenders. Both the PNB Consortium Lenders and Term Lenders requested Respondent No. 1 to permit the Corporate Debtor to utilize the “non-fund” based limits sanctioned by it. Perusal of the minutes of meetings held on May 04, 2018, July 12, 2018 will clearly show that the lenders including the LC limits to the extent of frozen limits of Rs. 46.50 Crores and thereafter, PNB will allow to pay the outstanding liability to Respondent No. 1 from TRA. It is pertinent to note that Respondent No. 1 has authorized PNB to do all acts and deeds on behalf of the bankers, as PNB may deem appropriate as the lead bank of the consortium. They also agreed to rectify and confirm all such acts and deeds done by PNB.

xii) During a meeting on September 6, 2018, PNB being the lead bank, requested Respondent No. 1 to allow the Corporate Debtor to utilize the LC limits to the extent of frozen limit of Rs. 46.50 Crores. PNB further requested Respondent No. 1 that they will allow the Corporate Debtor to pay the outstanding LC liability from the TRA account maintained by PNB, only if Respondent No. 1 allows further opening of further LC's. This request was made repeatedly by PNB and other consortium lenders to Respondent No. 1 in several other meetings.

xiii) Further, by a letter dated December 5, 2018, Respondent No. 1, inter alia, called upon Punjab National Bank to release payments from the TRA Account.

xiv) The Appellant submits that even the refusal to open letters of credit on the basis of limits sanctioned despite specific requests of the of the PNB Consortium Lenders to allow opening of letters of credit is actually a default on the part of Respondent No. 1 only because when funds were available with TRA, it is the function of the TRA Bank to provide the same to the financial Creditors (as per paragraph 4.2.8 of RBI Circular dated July 01, 2015). The Clause 4.2.8 of the master circular is as under:-

“where the remittances by the borrower under consortium lending arrangements are pooled with one Bank and or/where the bank receiving the remittances is not parting with the share of the member banks’ and therefore be treated as NPA. The banks participating in the consortium should therefore arrange to their share of recovery transferred from the lead bank or get an express consent from the lead bank or get an express consent from the Lead Bank for the transfer of their share of recovery, to ensure proper asset classification in their respective books”

xv) The pitiable situation in which the Corporate Debtor was placed at one point of time was that it was unable even to understand the exact quantum of working capital facilities available and whether the sanctioned facilities would be made available or not. The consequence of this was that the Corporate Debtor could not plan its operations, sourcing of raw materials, statutory and other payments etc., adversely affecting the entire production and generation. Enormous issues were faced by Corporate Debtor on account of lack of working capital facilities including financial difficulties for sourcing raw materials, and delays in paying dues to coal suppliers and procuring coal from traders at a much higher cost.

xvi) It is pertinent to note that at the meeting of Working Capital Lenders held on February 07, 2019, Respondent No. 1 stated that since the account was transferred to their Branch, they will secure permission from their Head Office to renew and allow the Corporate Debtor to use working capital limits as per sanction.

3. That the Respondent No.1 – Syndicate Bank (Financial Creditor) has claimed the total amount of Rs. 32,22,50,6660.16 as outstanding against the Appellant (Corporate Debtor) as on 29.07.2019. The Respondent No.1 – Syndicate Bank (Financial Creditor) has filed an application under Section 7 on 30.07.2019 and the Ld. Adjudicating Authority passed an order dated 27th January, 2020 which is impugned in this Appeal.

Submissions on behalf of the Appellant

4. The learned counsel for the Appellant during the course of argument and in his written submissions have stated that the Ld. Adjudicating Authority has failed to appreciate that Bhadreshwar Vidyut Pvt. Ltd. (**for short BVPL**) had entered into certain financing arrangements (both Working Capital and Term Loan) with a consortium of lenders. The Respondent No. 1 – Syndicate Bank was a part of the Working Capital consortium in which Punjab National Bank was the lead Bank and the duly constituted attorney of all the lenders, including Respondent No. 1- Syndicate Bank. The Respondent No. 1- Syndicate Bank constitutes a miniscule 1.64% of total outstanding debt of BVPL.

5. In order to keep its 300MW power plant running, BVPL required fuel (in the form of coal) which was paid for using letters of credit. The Respondent

No. 1- Syndicate Bank provided the Letters of Credit facility to BVPL vide sanction letters dated 07.11.2015 and 16.11.2015 to purchase the fuel required to keep the power plant running.

6. It is further submitted by the Appellant that the lenders (both Working Capital and term Loan) and BVPL entered into a Trust and Retention Account Agreement dated 26.07.2018 ("TRA"). Under the terms of the TRA, all of BVPL's revenues were to flow into the "Trust Retention Account" (at page 290 Vol.- II of clause 4.6 of the Appeal Paper Book) and only Punjab National Bank (PNB) had the authority to disburse funds from this account to other lenders (at page 290 Vol.- II of clause 5.1(a) of the Appeal Paper Book).

7. It is further submitted by the Appellant that the TRA also contains a 'Waterfall mechanism' for payment to the lenders. The waterfall mechanism provides that the first priority of payments is for new material procured under letters of credit established by working capital lenders, including the Respondent No. 1, which was always honoured by the lenders and after meeting other operational expenses, the balance was used to first pay the other dues to the working capital lenders and thereafter to the term lenders.

8. It is further submitted by the Appellant that contrary to the understanding with the other lenders, Respondent No. 1- Syndicate Bank decided to unilaterally reduce the Letters of Credit facility being provided to BVPL. This adversely impacted BVPL's functioning and also jeopardised the ability of all other lenders to continue to receive moneys for servicing their debt obligations through revenues form continued generation / operations of BVPL's.

9. It is further submitted by the Appellant that all the lenders (including PNB) requested to Respondent No. 1 – Syndicate Bank to continue providing the Letters of Credit facility to BVPL in accordance with their contractual obligations as recorded in the consortium meetings on 04.05.2018 (at page 346 Vol.- II of the Appeal Paper Book), 12.07.2018 (at page 350 Vol.- II of the Appeal Paper Book), 06.09.2018 (at page 355, Para-6 Vol.- II of the Appeal Paper Book) and 23.04.2019 (at page 488, Para-5.1 Vol.- III of the Appeal Paper Book).

10. Learned counsel for the Appellant submits that the Ld. Adjudicating Authority overlooking the facts and also Judgment of the Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank & Anr. (2018) 1 SCC 407* where in the Hon'ble Supreme Court held that **“the law requires that there must be a debt owed by a Corporate Debtor over Rs. 1 lakh and default has been committed by the Corporate Debtor in the payment of that debt”** has passed the impugned order.

11. It was further submitted by the counsel for the Appellant that the failure by PNB and other consortium lenders refusing to release or disburse sufficient amounts lying in the TRA account to Syndicate Bank (now Canara Bank) can be said to be default by the Corporate Debtor.

12. While referring to Section 7 of the IBC and also which has been interpreted by the Hon'ble Supreme Court in *Innoventive Case (Supra)* where it has been categorically held that default on the part of the Corporate Debtor *sine qua non* of an application under Section 7. 'Default' is defined in section 3 (12) as non-payment of debt when whole or any part of instalment of the

amount of debt has become due and payable and is not paid by the debtor or the Corporate Debtor as the case may be.

In the present case, there was no default committed by the Corporate Debtor. The Ld. Adjudicating Authority failed to record its satisfaction under Section 7 (5) read with Section 6 and Section 3(12) of the Code, that the default is by the lenders and not the Corporate Debtor. Therefore, impugned order deserves to be set aside.

13. It is further submitted that in its letter dated 05.12.2018 (at page 358, Vol.-II, Ann.- A/16 of the Appeal Paper Book) address to the Appellant and have admitted that considerable balance amount was available in TRA account, this fact has been admitted.

14. It is further submitted that from certificate issued by Chartered Accountant at page 18 to 20 of the Additional Document filed before the Appellate Tribunal on 06.02.2020. **“It has been certified that the collection amount of Rs. 962.92 Crores for the period from 1st July,2018 to 30th June, 2019 in the TRA account”**. However, disbursement was withheld by PNB (and not by Corporate Debtor/BVPL) because of the refusal by Respondent No. 1 to restore sanctioned limits for BVPL. It is further submitted that during the consortium meeting on 06.09.2018, PNB also requested Syndicate Bank that they will allow to pay the outstanding LC liability of Syndicate Bank from TRA only after Syndicate Bank will allow opening further LCs for BVPL.

15. It is further submitted that these facts established that there was no default committed by Corporate Debtor/BVPL overlooking these facts. Application under Section 7 of the IBC was admitted.

16. It is further submitted that the declaration of the Corporate Debtor as an NPA by Syndicate Bank was made for the first time in its demand letter dated 05.12.2018 in which it was informed that having waited for the LC payment for 90 days till 31.10.2018, it was declared the amount due with Corporate Debtor as NPA retrospectively from 30.06.2018 completely ignoring that the Corporate Debtor had put in funds in the TRA account for disbursement to all the lenders and that on 06.09.2018 and PNB working as capital lead bank assured Syndicate Bank (Respondent No. 1) of payments.

17. Thus, the declaration of NPA was plainly incorrect, as it was the result of inter se disputes between lenders and not because of default committed by Corporate Debtor.

18. It was further submitted by the Appellant that the Respondent No. 1 has incorrectly stated on affidavit in Section 7 application at Page 86 VI.- 1 in paragraphs 11 & 12 of the Appeal Paper Book that there was no response from the Appellant.

19. It is further submitted by the Appellant referring to letter dated 27.12.2018 which was filed before this Tribunal at Page No. 17 vide Diary No. 18698 dated 06.02.2020 bringing on record. The aforesaid letter written by Chief Manager, Punjab National Bank address to Chief Manager, Syndicate Bank (Respondent No. 1) wherein referring to letter dated 05.12.2018 is as under: -

“we refer to your letter dated 05.12.2018 on the above company, high lighting various issues with respect to the above account.

In this regard, please refer to the minutes of the consortium meeting dated 18th Sept. 2018, wherein in response to your bank observations that LC devolvement is not paid by the company, company officials replied that they are ready to pay LC bill payment immediately, if Syndicate bank agrees to open further LCs, as the company is going through cash crunch and with great difficulty they are running the unit and that Syndicate Bank and Vijaya Bank are not allowing the limits sanctioned to the company. In the same consortium meeting Sh. K.S. Srivastava DGM, PNB requested your bank to restore sanctioned limits.”

20. And also reference was made in the letter / minutes of the consortium meeting dated 18th Sept. 2018 wherein Syndicate Bank (Respondent No. 1) agreed to open further LCs, as the company is going through cash difficulty and the PNB requested to Syndicate Bank to restore the sanctioned limits of the Appellant.

21. Further the Respondent No. 1- Syndicate Bank assured the PNB (lead bank) to extend the limits of LC Rs. 46.50 Crores of the Appellant and further Syndicate Bank was allowed to be paid from TRA account only after Syndicate Bank allows opening of further LCs. These facts were not considered by Ld. Adjudicating Authority while passing the impugned order.

22. It is further submitted that vide letter dated 03.08.2019 (at page 521, Vol.-III of Appeal Paper Book) address to Respondent No. 1 – Syndicate Bank request was made by the PNB (lead bank) to reconsider the decision to initiate proceedings under Section 7 of the IBC before NCLT against the Appellant.

23. It was also submitted that the PNB further sent a letter dated 09.08.2019 (at page 522, Vol. -III of Appeal Paper Book) to the effect wherein mentioned that Respondent No. 1 minority share of 1.64%, unilateral action is jeopardizing the interests of other lenders who have a much higher stake in the account and further request was made to reconsider the decision taken by Respondent No. 1 to initiate proceedings under Section 7 of the IBC before the NCLT against the Appellant.

24. Learned counsel for the Appellant also referred to e-mail dated 09.08.2019 (Annexure- A/ 25) at page 523 of the Appeal Paper Book sent by Addl. G.M.(SAM), REC Limited addressed to Respondent No. 1 requested therein that lenders are still deliberating on the proposal to decide further way. The matter unilateral action by any of the consortium lender will not be in the interest of other stakeholders including lenders.

25. Learned counsel for the Appellant also referred to Annexure- A/26 at page 524 Vol. III of the Appeal Paper Book, the relevant portion is as under:-

“Matter related to referring of Project Company to NCLT by Syndicate Bank for IBC proceedings

Company informed that Syndicate Bank has referred the Project Company to NCLT to initiate IBC proceedings. Petition is yet to be admitted by NCLT. Consortium lenders told the Syndicate Bank representative that currently, consortium is exploring the options outside the IBC. Referring the Project Company to NCLT may jeopardize the interest of other lenders of stakeholders. Consortium requested Syndicate Bank to review their decision. Syndicate Bank agreed that they shall

take up with higher authorities to reconsider their decision regarding NCLT petition.”

26. Learned counsel for the Appellant submits that the Ld. Adjudicating Authority overlooking the aforesaid facts and also in teeth of the Judgment of the Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank & Anr. (2018) 1 SCC 407* have passed the impugned order.

Submissions of Respondent No. 1

27. The learned counsel for the Respondent No. 1 during the course of argument and in his written submissions have stated that the Ld. Adjudicating Authority in its summary jurisdiction cannot go into disputed questions of fact and further it was submitted that Ld. Adjudicating Authority have rightly come into conclusion that the Respondent No. 1 has proved the existence of default as the Appellant has not paid debt which was due or in part of the amount of debt will become due.

28. It was further submitted that the TRA is an arrangement amongst the bankers for the purpose of routing the cash flows of the Corporate Debtor. The Appellant is placing reliance on some portions of the letter dated 5th December, 2018 (at page No. 358 of Vol.-II of the Appeal Paper Book) and the Appellant is placing reliance on this document to buttress its point that there was no default on the part of the Corporate Debtor. The said letter needs to be read as a whole and a perusal of this letter itself would reveal that the amount of the Corporate Debtor was continuing to be a NPA from 30.06.2018 and the validity of the working capital limits expired on 30.06.2018 and documents required for renewal proposal has not been submitted. The fact

remains that the classification of NPA is not challenged in any manner known to law and the same is final. The right of the financial creditor stems from the various loan documents executed by the Corporate Debtor and mechanism under TRA will not enable the Corporate Debtor from taking a plea that there is no default.

FINDINGS

29. We have carefully perused the record of the case, argument advanced on behalf of the parties and gone through the written submissions. Taking aforesaid facts and circumstances, we are of the view that Ld. Adjudicating Authority have failed to consider the letter dated 27.12.2018 filed before this Tribunal at Page No. 17 vide Diary No. 18698 dated 06.02.2020 whereby refer to the minutes of the consortium meeting dated 18th September, 2018 the Syndicate Bank (Respondent No. 1) agreed to open further LCs in favour of the Appellant as the Appellant was going through cash difficulties and also agreed to restore the sanctioned limits of the Appellant. The LC limits to the extent of Rs. 46.50 Crores and further it was agreed that the amount which have been deposited in TRA, the amount will be paid to Respondent No. 1 after opening the TRA.

- The Syndicate Bank (Respondent No. 1) constitutes a miniscule 1.64% of total outstanding debt of BVPL and PNB was a lead bank of consortium.
- The Respondent No. 1 has only 1.64% stake of the total value of debt owed by the Corporate Debtor to all the Financial Creditors.
- The Ld. Adjudicating Authority failed to consider the certificate issued by S.K. Gulecha & Associates, Chartered Accountants dated 05.02.2020

Annexure- 37 at page 18 of the Additional Documents which has not been denied by the Respondent No. 1. The relevant portion of certificate of Chartered Accountants is as under: -

“we also certify that the collection amount of Rs. 962.92 crores credited to the account of Punjab national Bank TRA-0343002100540705 for the period from 1st July, 2018 to 30th June, 2019. Month wise collection details are herewith.”

- The Ld. Adjudicating Authority also failed to consider the letter dated 27.12.2018 written by the Chief Manager, Punjab National Bank to the Syndicate Bank (Respondent No. 1) whereby refer to the minutes of the consortium meeting dated 18th September, 2018 the Syndicate Bank (Respondent No. 1) agreed to open further LCs.
- On 06.09.2018 Punjab National Bank (lead bank) made request to the Respondent No. 1 to permit the Appellant to utilize the LC limits to the extent of frozen limit of Rs. 46.50 Crores and it was also agreed that the amount of Syndicate Bank will be paid from TRA account but instead of complying the aforesaid decision taken in the meeting, the Respondent No. 1 declared the amount of NPA from retrospective effect from 30.06.2018 to the tune of Rs. 32,22,50,660.16/-.
- Despite the request of the Punjab National Bank (lead bank) vide letter dated 27.12.2018 the Respondent No. 1 failed to comply the decision taken on meeting dated 05.12.2018 and filed an Application under Section 7 of the IBC which was mechanically allowed by the Ld. Adjudicating Authority.
- The Ld. Adjudicating Authority overlooked the facts and also Judgment of the Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank & Anr. (2018) 1 SCC 407*.

- In the face of ample and weighty evidence on record, it cannot be said that the Corporate Debtor is under no obligation to discharge its liability in respect of the 'Financial Debt' payable to the 'Financial Creditor' but the mere fact of debt being due and payable in law is not enough to justify initiation of Corporate Insolvency Resolution Process at the instance of Financial Creditor unless it establishes default on the part of the Corporate Debtor in regard to the debt. The onus of proof of default on the part of Corporate Debtor lies on the Financial Creditor and it has to demonstrate that default has occurred on account of failure on the part of Corporate Debtor to discharge its liability.
- In the instant case, Corporate Debtor has been subjected to restructuring of credit facilities and the operations of the bank account of the Corporate Debtor are regulated by the 'Punjab National Bank Consortium Inter-se Agreement' dated 17th December, 2015, which has to be read in juxtaposition with 'Trust Retention Account (TRA) Agreement' dated 26th July, 2016. Under the arrangement of debt restructuring, the Corporate Debtor's deposit would go to the TRA account and it is not open to the Corporate Debtor to discharge its liability on account of financial debt to various lenders without the approval of the Lead Bank i.e. Punjab National Bank. It transpires from the record that information in this regard has already been given by the Corporate Debtor to the Lead Bank that the Financial Creditor – Syndicate Bank i.e. Respondent No. 1 has expressed its intention to trigger Corporate Insolvency Resolution Process against it unless payments are released. However, the Lead Bank has conveyed to Respondent No.1 that it shall have to issue a Letter of Credit before release of payment by the Corporate Debtor but Respondent No. 1 – Syndicate Bank (Financial Creditor) did not comply.

It further appears from record that the stake of Respondent No. 1 – Syndicate Bank (Financial Creditor) barely extends to 1.64% of the total debt. Viewed in this context, the only conclusion deducible from record is that the default cannot be attributed to the Corporate Debtor as the money deposited with the TRA Account was already available for release but its release was regulated in terms of the 'Punjab National Bank Consortium Inter-se Agreement' r/w 'Trust Retention Account (TRA) Agreement'. May be the Lead Bank was not justified in insisting upon issue of Letter of Credit as a precondition for release of payment in favour of Respondent No.1, but that does not in any manner be read as an act of default on the part of Corporate Debtor who has, in compliance of the terms of the aforesaid agreements made over its entire collection in the TRA Account as per terms of the Agreement. It would therefore be difficult to hold that a default has occurred on the part of the Corporate Debtor. Non-release of money out of the entire collection of Corporate Debtor does not render the Corporate Debtor liable for default who has performed his part of the contract. The fault lies somewhere else. In the inter-se dispute of Financial Creditors, Respondent No. 1 may have faced discrimination as regards release of money from TRA Account but that would not render the Corporate Debtor accountable for default.

- In these circumstances, triggering of Corporate Insolvency Resolution Process at the instance of Respondent No. 1 is unwarranted. This is not the case where the Corporate Debtor is invoking Inter Creditor Agreement to wriggle out of its liability. The Corporate Debtor having performed his part of the contract by placing its entire collection in the Trust Retention Account (TRA) in accordance with the terms of the agreement cannot be said to be in

default. Release of the amount due to Respondent No. 1 in terms of the 'Punjab National Bank Consortium Inter-se Agreement' read together with Trust Retention Account (TRA) Agreement is an in house contractual arrangement inter-se the Creditors for which the Corporate Debtor cannot be blamed. Initiation of Corporate Insolvency Resolution Process in the facts and circumstances, as noticed, cannot be appreciated as the same falls foul of the mandate of Section 7 of the I&B Code. Viewed thus, the impugned order cannot be supported. The Appeal, therefore, needs to be allowed.

ORDER

From the stand taken by the parties, we find that there was no fault on the part of the Corporate Debtor. As the Ld. Adjudicating Authority failed to notice that aforesaid facts, we set aside the impugned order dated 27th January, 2020 in IBA/967/2019 passed by National Company Law Tribunal, Division Bench-I, Chennai.

- In effect, Order(s) passed by the Ld. Adjudicating Authority appointing 'Interim Resolution Professional / Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed by the Ld. Adjudicating Authority pursuant to impugned order and action taken by the 'Interim Resolution Professional / Resolution Professional', including the advertisement published in the newspaper calling for applications, all such orders and actions are declared illegal and are set aside.
- The application preferred by Respondent under Section 7 of the I & B Code, 2016 is dismissed.
- The Ld. Adjudicating Authority will now close the proceedings.

- The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.
- The Ld. Adjudicating Authority will fix the fee of 'Interim Resolution Professional / Resolution Professional' and the Corporate Debtor will pay the fees of the 'Interim Resolution Professional / Resolution Professional' and other cost incurred by him.
- The case stands remitted to the Ld. Adjudicating Authority only for such determination.
- The Appeal is allowed with aforesaid observation and direction. No cost.
- Let the Registry to communicate the Judgment to the Ld. Adjudicating Authority (National Company Law Tribunal, Division Bench-I, Chennai).
- Copy of the Judgment be provided to the party concern as per Rule.
- Copy of the Judgment will be up-loaded in the Website of this Appellate Tribunal.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

NEW DELHI
RN/