

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 387 of 2019

IN THE MATTER OF:

**Oriental Bank of Commerce
Plot No. RC-20, IDA Scheme No.134
Indore – 452010 (Madhya Pradesh)
Email: bm0183@obc.co.in
(Through: The Chief Manager)**

...Appellant

Versus

**M/s Ruchi Global Limited
Registered Office:
611, Tulsiani Chambers
Nariman Point, Mumbai
E-mail: ruchiglobal@ruchiglobal.com**

...Respondent

Present:

**For Appellant: Mr. H.P. Bhardwaj with Mr. Nishant Bhardwaj, Advocates
For Respondent: Mr. Anand H.K., Mr. Krishnendu Datta, Ms. Mehak
Khurana and Mr. Raunak Verma, Mr. K. Datta, Advocates**

ORDER

31.01.2020 Heard Advocate Shri H.P. Bhardwaj for the Appellant and the Learned Counsel for Respondent – Corporate Debtor. This Appeal has been filed by Oriental Bank of Commerce against dismissal of Application filed under Section 7 of Insolvency and Bankruptcy Code, 2016 ('IBC' in short) against the Respondent – Corporate Debtor by Impugned Order dated 14th February, 2019. The Learned Counsel for the Appellant submits that the Appellant Bank had extended Letter of Credit facility to the Corporate Debtor which was non-fund based and the respondent was taking benefit of the same. In the account of the Respondent – Corporate Debtor there were outstanding dues and thus, the Application under Section 7 was filed mentioning the amount in default as on

the date of classifying the debt as NPA, i.e. 31.08.2017 was/is Rs.8,22,36,542/-.

2. It is stated that the Appellant Bank was part of a Consortium of Banks consisting of (i) Dena Bank (ii) Punjab National Bank (iii) Jammu & Kashmir Bank and (iv) Oriental Bank of Commerce. It is stated that the sanction letters issued in favour of the Corporate Debtor were renewed from time to time. The Counsel states that Third Supplemental Inter Se Agreement (Inter se Agreement in short) dated 27th January, 2012 (page 334) was entered into between the Consortium of Banks. This was done in order to secure credit facility granted by the Financial Creditor for an amount of Rs.34.15 crores out of total credit facility by the Consortium of Bank, which was Rs.343.44 crores. Learned Counsel states that the credit facility given by Appellant was further secured by other documents including Deed of Guarantee and Undertaking/Declaration from the Borrower as referred in the Application under Section 7 of IBC.

3. The Appellant states that the Adjudicating Authority heard the parties and considered the Reply filed by the Corporate Debtor and referring to the Inter-se Agreement (page 334) dismissed the Application observing that Applicant should have given notice as per its Agreement dated 27th January, 2012 to the lead Dena Bank and only then the Application should have been filed. The Application was dismissed with liberty to file fresh petition.

4. The Learned Counsel for the Appellant has referred to the Clauses of the Agreement relied on by the Adjudicating Authority to dismiss the Section 7

Application. It is stated that the Consortium Agreement was a matter Inter-se the concerned Banks to oversee and monitor credit facility extended by the department by the different Banks to the Corporate Debtor and it was an agreement between the Banks and Corporate Debtor was not party to it. Counsel states that in law nothing bars the Appellant from filing Application under Section 7 of IBC when debt is due and in default. Counsel states that although the Respondent did not dispute before the Adjudicating Authority the fact that there was debt and default, still only because of the Consortium Agreement, the Application was dismissed.

5. Learned Counsel for the Appellant is relying on judgment dated 11th August, 2017 of this Tribunal in the matter of **“Asian Natural Resources (India) Ltd. & Anr. Vs. IDBI Bank Ltd.”** reported in I (2018) BC 23 (NCLAT) to submit that such Agreement of Consortium is Agreement between the Banks and the Inter-se Agreement between Financial Creditors will not override Section 7.

6. Learned Counsel for the Respondent is referring to the observations of the Adjudicating Authority to submit that the Adjudicating Authority referred to Clauses of the Inter-se Agreement and asked the Appellant to comply the Inter-se Agreement and after giving notice to the lead Bank may file Application under Section 7. Counsel states that the judgment in the matter of Asian Natural Resources (India) Ltd. & Anr. (supra) cannot be relied as on facts that judgment was different and that matter Consortium had Clauses that only the lead Bank could file proceedings. Learned Counsel is submitting that without notice to the lead Bank Appellant rushed into the Adjudicating Authority under

Section 7, which was rightly held would not be maintainable. The Counsel referred to the reply (Page 474) filed before the Adjudicating Authority to point out that Corporate Debtor had raised issues that the Appellant Bank had not been following the lines which were laid down by the Consortium.

7. Heard Counsel for both sides. The Inter-se Agreement between the Banks was restricted to the Banks and Corporate Debtor was not part of the Inter-se Agreement. This fact is not in dispute. Learned Counsel for the Appellant has pointed out para 7 (xxii) of the Appeal to submit that the account of the Respondent Corporate Debtor remained out of order in the books of Appellant Bank who was regular in the books of other member Banks. Appellant states that as per the guidelines of the Reserve Bank of India, it was the Appellant only who classified the account of the Respondent as NPA as on 31st August, 2017. The Learned Counsel has referred to notice dated 05th September, 2017 sent by the Appellant in this regard to the Corporate Debtor (page 404). According to the Learned Counsel when the account of the Appellant Bank became NPA, it was bound to take action against Corporate Debtor.

8. In our view the Agreement being Inter-se between the Banks the Corporate Debtor cannot take benefit of the Clauses in that agreement, which are binding only the Banks. If there is a default by any member of the Consortium, it would be a matter for the other banks to be aggrieved with and Corporate Debtor cannot take benefit of the same to raise grievance. If the Appellant Bank did not act in tune with the Consortium Agreement it may be matter of consideration for other Bank/s of the Consortium and/or Reserve Bank of India. However, there is nothing which Bars filing of Section 7 of IBC

Application by the Appellant. Even if there was Clause that the Bank which wants to take action should give notice of 30 days, if notice was not given that would be a matter for the Lead bank to look into. That does not create Bar for the Appellant Bank to move Application under Section 7 of IBC. In judgment in the matter of **“Asian Natural Resources (India) Ltd. & Anr. Vs. IDBI Bank Ltd.”** this Tribunal has held in para 7 of the Judgment as under:

“7. Apart from that the Inter se Agreement between different Banks is not binding in nature, the ‘Corporate Debtors’ not being signatories cannot derive advantage of such Inter se Agreement. This apart, the ‘financial creditors’ having right to file application under Section 7 of the I&B Code, individually or jointly on behalf of other ‘financial creditors’ as quoted below, the Inter se Agreement between the ‘financial creditors’ cannot override the said provision, nor can take away the right of any Financial Institution to file application under Section 7 of the I&B Code.”

9. We are in Agreement with the observations made by the Hon’ble Bench of this Tribunal as above. We find that the judgment of the Adjudicating Authority in dismissing the Application under Section 7 because of the Consortium Agreement cannot be maintained.

10. Nothing is shown that there was any other reason not to admit the Application. For the above reasons, we allow the Appeal. The Impugned Order is quashed and set aside. We remit back the matter to the Adjudicating Authority. Parties are directed to appear before the Adjudicating Authority on 24th February, 2020. If the Respondent – Corporate Debtor settles the matter

with the Appellant before that date, the Adjudicating Authority will consider the same. Otherwise, the Adjudicating Authority will Admit the Application under Section 7 of IBC and pass further necessary orders required to be passed on admission of application under Section 7 of IBC as per provisions of IBC.

11. The Appeal is disposed accordingly. No costs.

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

[Justice Anant Bijay Singh]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

pks/md