NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 336 of 2017

(Arising out of Order dated 15th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP No. 1178/IBC/NCLT/MB/MAH/2017)

IN THE MATTER OF:

Sh. Naveen Luthra **...Appellant**

Vs

Bell Finvest (India) Ltd. & Anr. **....Respondents**

Present:

For Appellant: **Mr. Arun Kathpalia, Senior Advocate with Mr. Chitranshul A. Sinha, Mr. Somaksh Goyal, Mr. Febin Mathew and Ms. Sonali Khanna, Advocates.**

For Respondent: **Mr. Vinit J Mehta and Mr. G. Aniruth Purusothaman, Advocates.**

WITH

Company Appeal (AT) (Insolvency) No. 07 of 2018

(Arising out of Order dated 11th September, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP No. 1245/I&BC/NCLT/MB/MAH/2017)

IN THE MATTER OF:

Avance Logistics & Trading India Private Limited **...Appellant**

Vs

Bell Finvest (India) Limited **....Respondent**

Present:

For Appellant:	**Ms. Shruti Agrawal and Ms. Tanu Priya Gupta, Advocates. Mr. A. Antarkar, Company Secretary.**
For Respondent:	**Mr. Vinit J. Mehta and Mr. G. Aniruth Purusothaman, Advocates.**

WITH

Company Appeal (AT) (Insolvency) No. 10 of 2018

(Arising out of Order dated 15th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP No. 1153/I&BP/2017)

IN THE MATTER OF:

Bell Finvest (India) Limited ...Appellant

Vs

Intercon Container & Survey & Commodities Pvt. Ltd. ....Respondent

Present:

For Appellant:	**Mr. Vinit J. Mehta, Mr. Uday Pratap Singh, Mr. G. Aniruth Purusothaman and Mr. Pratyush Miglani, Advocates.**
For Respondent:	**Ms. Shruti Agrawal and Ms. Tanu Priya Gupta, Advocates. Mr. A. Antarkar, Company Secretary.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In these appeals as common question of law is involved, they were heard together and disposed of by this common judgment.

2. 'M/s. Bell Finvest (India) Limited'- ('Financial Creditor') filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) for initiation of 'Corporate Insolvency Resolution Process' against 'M/s. Luthra Water Systems Private Limited'- ('Corporate Debtor'). The said application was admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 15th November, 2017. One of the Shareholders of the 'Corporate Debtor' has challenged the said order in Company Appeal (AT) (Insolvency) No. 336 of 2017 on the ground that the petition under Section 7 of the 'I&B Code' is not maintainable with regard to 'usurious penal interest' in view of Section 3 of the 'Usurious Loans Act, 1918'.

3. 'M/s. Bell Finvest (India) Limited'- ('Financial Creditor') filed another application under Section 7 of the 'I&B Code' for initiation of 'Corporate Insolvency Resolution Process' against 'M/s. Avance Logistics & Trading India Pvt. Ltd.'- ('Corporate Debtor'). The said application has also been

admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 11th September, 2017, which has been challenged by the 'Corporate Debtor' on similar grounds as challenged in Company Appeal (AT) (Insolvency) No. 336 of 2017.

4. 'M/s. Bell Finvest (India) Ltd.'- ('Financial Creditor') filed another application under Section 7 of the 'I&B Code' for initiation of 'Corporate Insolvency Resolution Process' against 'Intercon Container Survey & Commodities Pvt. Ltd.'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 15th September, 2017, rejected the said application holding the penal interest as 'usurious'.

5. The question arises for consideration in these appeals is whether the Adjudicating Authority can entertain or reject an application under Section 7 of the 'I&B Code' on the ground of "usurious and extortionate penal interest"?

Stand of the counsel for the Appellant- Mr. Naveen Luthra in Company Appeal (AT) (Insolvency) No. 336 of 2017

6. Learned counsel appearing on behalf of the Appellant submitted that the Adjudicating Authority even though took cognizance of the arbitral proceedings which suggest that a dispute with regard to quantum is

pending wrongly admitted the application. Further, according to him, it was the responsibility of the Adjudicating Authority to decide where penal interest claimed by the 'Financial Creditor' is hit by 'Usurious Loans Act, 1918'.

7. According to the learned counsel for the Appellant, the 'time value of money' in the instant case is the flat rate of 10% per annum which stood paid on the date of disbursal of the loan amount and the 'usurious and extortionate penal interest' does not give rise to a 'financial debt' as defined under Section 5(8) of the 'I&B Code'. It is stated that an amount of Rs. 1,37,66,400/- was disbursed after deducting flat rate of 10% advance interest which amounted to Rs. 34,41,600/-. Thereafter, the 'Financial Creditor' only claimed extortionate penal rates of interest @ 350-400% simple interest per annum which do not fall within the purview of 'financial debt' and therefore, the Respondent cannot claim to be a 'Financial Creditor'.

8. It was further submitted that the 'Resolution Professional' is mandated under Section 50(1) to apply before the Adjudicating Authority for the setting aside of 'extortionate credit transactions' involving receipt of financial debt if the transaction required exorbitant payments of interest to be made by the 'Corporate Debtor'.

9. Further, according to learned counsel for the Appellant, the charging of an extortionate interest of 1% per day i.e. 365% per annum, over and

above the interest rate, is in the nature of penal interest being grossly unjust and against the public policy.

10. Reliance was placed on the decision of the Hon'ble Supreme Court in ***"Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr.– AIR 1986 SC 1571"***, wherein the Hon'ble Apex Court held that the contracts which are 'unconscionable and opposed to public policy' are void in accordance with Section 23 of the Indian Contract Act.

11. Learned counsel appearing on behalf of the Respondents referred to Loan Agreement dated 15th October, 2015 entered between the parties for a sum of Rs. 1,72,08,000/- to be paid along with interest at the rate of 10% per annum.

12. It was submitted that the Appellant cannot take advantage of the 'Usurious Loans Act, 1918' for initiation of 'Corporate Insolvency Resolution Process' under the 'I&B Code'.

13. Reliance has also been placed on the 'Severability' Clause 14 of the Loan Agreement dated 15th October, 2015 which reads as follows:-

> *"if one or more rights or provisions set forth in this Agreement are invalid or unenforceable, it is agreed that the reminder of this Agreement shall be enforceable and to the extent permitted by*

Law(s), the Parties intentions, as reflected in any such right or provision that is invalid or unenforceable, shall be given effect to."

Stand of the Appellant- 'Avance Logistics & Trading India Private Limited'- 'Corporate Debtor' in Company Appeal (AT) (Insolvency) No. 07/2018

14. Learned counsel appearing on behalf of the 'Corporate Debtor' took similar plea that the proceedings under Section 7 cannot be initiated in respect to 'usurious' and 'extortionate rate of interest'.

15. It was also submitted that the contravention of 'NBFC Fair Practices Code' prescribed by the Reserve Bank of India under Section 45L of the 'Reserve Bank of India Act, 1934' and provisions of Sections 3 and 4 of the 'Usurious Loans Act, 1918' stand violated in the present case.

16. According to learned counsel, the 'Usurious Loans Act, 1918' was enacted in the year 1918 whose object was to confer powers to all courts in India and equitable jurisdiction in cases relating to 'usurious loans' of money or in kind. It was submitted that the documents were deceitfully obtained by the 'Financial Creditor' under the garb of 'standard documents'.

17. Reliance has also been placed on Section 2 of the 'Usurious Loans Act, 1918' which defines "interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

18. It was submitted that the charging of interest @ 1% per day for default levied by the 'Financial Creditor', even after recovery of interest for the entire tenure of loan at source was not only excessive but substantially unfair, which warrants re-opening of the transactions between the Appellant and the 'Financial Creditor'.

19. In the present case, similar plea has been taken by the learned counsel appearing on behalf of 'Bell Finvest (India) Limited' and it was intimated that even the principal amount has not been returned by the 'Corporate Debtor' and they defaulted in making payment.

Stand of counsel for the Appellant- 'Bell Finvest India Limited' in Company Appeal (AT) (Insolvency) No. 10 of 2018

20. Learned counsel for the Appellant- 'Bell Finvest India Limited'- ('Financial Creditor') submitted that the 'Intercon Container & Survey & Commodities Pvt. Ltd.'- ('Corporate Debtor') defaulted in making repayment of dues amounting to Rs. 58,55,500/- as on 20th June, 2017, which was

the reason for filing application for 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor'.

21. According to the Appellant, the 'Corporate Debtor' approached the Appellant- 'Financial Creditor' for allowing loan of Rs. 30,00,000/- by its application dated 17th March, 2016. The loan was sanctioned by the Appellant by their letter dated 19th March, 2016 with the condition that the rate of interest payable would be @24% per annum flat rate payable in advance for the entire tenure. After negotiation rate of interest was discounted to 24% as against the applicable rate of 36% per annum. It is being further conditioned that interest amount of Rs. 4,80,000/- is payable in advance, EMI amount would be Rs. 3,75,000/- per month. The 'Corporate Debtor' has to give 'corporate guarantee' and the Directors have to give 'personal guarantee'. This loan amount was to be paid within 8 months from the first day of disbursement. It was also agreed upon that in case, the 'Corporate Debtor' defaulted in making payment, an additional interest @ 1% per day over and above the interest rate for defaulted/delayed period on the installment amounts will be charged.

22. It was submitted that pursuant to the agreement entered by the 'Corporate Debtor', and in view of Promissory Notes, Deeds of Guarantees and Warrantees, the Appellant disbursed Rs. 10 Lakhs on 31st March, 2016 and Rs. 15,20,000/- on 31st March, 2016 after remitting Rs. 4,80,000/- towards the advance interest in the loan account of the 'Corporate Debtor'.

23. It was alleged that since then not even a single payment was made by the 'Corporate Debtor', the Appellant was compelled to issue notice to the 'Corporate Debtor' on 11th September, 2016 under Sections 433 and 434 of the Companies Act, 1956, stating that since the 'Corporate Debtor' failed to make any of the installments as agreed by the 'Corporate Debtor', it is liable to pay additional interest @1% per day on and over the outstanding interest. It is only thereafter petition under Section 7 was filed.

Findings:

24. We have gone through the facts of each of the case and heard the submissions made by the parties and perused the relevant provisions and the records.

25. 'The Presidency- Towns Insolvency Act, 1909' Act 3 of 1909 was in existence while the 'Usurious Loans Act, 1918' was enacted. As per 'The Presidency- Towns Insolvency Act, 1909', the Court of Competent Jurisdiction used to decide the Insolvency under the aforesaid Act, 1909, the procedure was completely different than the procedure of resolution as prescribed under the 'I&B Code'.

26. When the power was vested with the 'Court' to deal with the insolvency proceedings under 'The Presidency- Towns Insolvency Act, 1909', by virtue of power conferred by Section 4 of the 'Usurious Loans Act, 1918', the Court used to exercise likewise powers as used to be exercised

under Section 3 of the 'Usurious Loans Act, 1918' by a Court in a suit to which the Act was applicable. It is worth to refer Section 4 of the 'Usurious Loans Act, 1918', before referring to the other provision, which is as under:

> *"4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies."*

27. The powers under Section 3 of the 'Usurious Loans Act, 1918' were vested with the 'Court', which deals with money claim and reads as follows:

> *"3. (1) Notwithstanding anything in the usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard ex parte or otherwise, the Court has reason to believe:-*
>
> (a) *that the interest is excessive; and*
>
> (b) *that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may,*
>
> (i) *re-open the transaction, take an account between the parties, and relieve*

the debtor of all liability in respect of any excessive interest;

(ii) *notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay and sum which it considers to be repayable in respect thereof;*

(iii) *set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :*

Provided that, in the exercise of these powers, the Court shall not —

(i) *re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than (twelve) year from the date of the transaction;*

(ii) *do anything which effects any decree of a Court.*

Explanation — In the case of a suit brought on a series of transactions the expression "the transaction" means for the purposes of proviso (i), the first of such transactions.

(2) *(a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.*

(b) *In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.*

(c) *In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.*

(d) *In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to*

show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation — Interest may of itself be sufficient evidence that the transaction was substantially unfair.

(3) *This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan [or for the redemption of any such security].*

(4) *Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bona fide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.*

For the purposes of this sub-section, the word "notice' shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882.

(5) Nothing in this section shall be construed derogating from the existing powers or jurisdiction of any Court.

4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies."

28. From the aforesaid Sections 3 & 4 of the 'Usurious Loans Act, 1918', the following facts emerge:

a) Section 3 is applicable only in the suit(s) to which the 'Usurious Loans Act, 1918' applies; and
b) Which is being heard and decided by 'a Court';
c) It should relate to 'excessive interest' and the transaction between the parties which is substantially unfair;

29. In ***"Binani Industries Limited Vs. Bank of Baroda & Anr. – Company Appeal (AT) (Insolvency) No. 82 of 2018 etc."***, this Appellate Tribunal by its judgment dated 14th November, 2018 held as follows:

> *"17. To decide the issue, it will be desirable to notice the object of the 'I&B Code', object of 'Resolution' and what is expected from the 'Committee of Creditors', as summarized below: -*
>
> 1. ***The objective of the 'I&B Code'***
>
> *As evident from the long title of the 'I&B Code', it is for reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders. The recent Ordinance explicitly aims to promote resolution over liquidation.*
>
> 2. *The objective of the 'I&B Code' is* ***Resolution****.*
>
> *The Purpose of Resolution is for* ***maximisation of value of assets of the 'Corporate Debtor'*** *and thereby for all creditors. It is not maximisation of value for a 'stakeholder' or 'a set of stakeholders'*

such as Creditors and ***to promote entrepreneurship, availability of credit and balance the interests.*** *The first order objective is "resolution". The second order objective is "maximisation of value of assets of the 'Corporate Debtor'' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests". This order of objective is sacrosanct.*

In the matter of ***"Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors."****, the Hon'ble Supreme Court observed that "the 'Corporate Debtor' consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible".*

3. 'Financial Creditors' as members of the 'Committee of Creditors' and their Role.

a. The Bankruptcy Law Reforms Committee (BLRC), which conceptualised the 'I&B Code', reasoned as under:

i. Under Para 5.3.1, sub-para 4, the BLRC provided rationale for 'Financial Creditors' as under:

"4. Creation of the creditors committee

…

The Committee deliberated on who should be on the creditors committee, given the power of the creditors committee to ultimately keep the entity as a going concern or liquidate it. The Committee reasoned that ***members of the creditors committee have to be creditors both with the capability to assess viability, as well as to be willing to modify terms of existing liabilities in negotiations.*** *Typically, 'Operational Creditors' are neither able to decide on matters regarding the insolvency of the entity, nor willing to take the risk of postponing payments for better future prospects for the entity. The Committee concluded that for the process to be rapid and efficient, the 'I&B Code' will provide that the creditors committee should be restricted to only the 'Financial Creditors'.*

ii. In Para 3.4.2 dealing with 'Principles driving design', the principle IV reads as under:

"IV. The 'I&B Code' will ensure a collective process.

9. The law must ensure that all key stakeholders will participate to collectively assess viability. The law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process. ***The liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution."***

b. ***The 'I&B Code' aims at promoting availability of credit.*** *Credit comes from the 'Financial Creditors' and the 'Operational Creditors'. Either creditor is not enough for business. Both kinds of credits need to be on a level playing field. 'Operational Creditors' need to provide goods and services. If they are not treated well or discriminated, they will not provide goods and services on credit. The objective of promoting availability of credit will be defeated.*

c. The 'I&B Code' is for reorganisation and insolvency resolution of corporate persons, ….for ***maximisation of value of assets of such persons to…. balance interests of all stakeholders.*** *It is possible to balance interests of all stakeholders if the resolution maximises the value of assets of the 'Corporate Debtor'. One cannot balance interest of all stakeholders, if resolution maximises the value for a or a set of stakeholder such as 'Financial Creditors'. One or a set of stakeholders cannot benefit unduly stakeholder at the cost of another.*

d. The 'I&B Code' prohibits any action to foreclose, recover or enforce any security interest during resolution period and thereby prevents a creditor from maximising his interests.

e. It follows from the above:

i. ***The liabilities of all creditors who are not part of 'Committee of Creditors' must also be met in the resolution.***

ii. *The 'Financial Creditors can modify the terms of existing liabilities, while other creditors cannot take risk of postponing payment for better future*

prospectus. That is, 'Financial Creditors' can take haircut and can take their dues in future, while 'Operational Creditors' need to be paid immediately.

iii. *A creditor cannot maximise his own interests in view of moratorium.'*

iv. *If one type of credit is given preferential treatment, the other type of credit will disappear from market. This will be against the objective of promoting availability of credit.*

v. *The 'I&B Code' aims to balance the interests of all stakeholders and does not maximise value for 'Financial Creditors'.*

vi. *Therefore, the dues of creditors of 'Operational Creditors' must get at least similar treatment as compared to the due of 'Financial Creditors'.*

3. 'Resolution Plan'

The 'I&B Code' defines 'Resolution Plan' as a plan for insolvency resolution of the 'Corporate Debtor' as a going concern. It does not spell out the shape, colour and texture of 'Resolution Plan', which is left to imagination of stakeholders. Read with long title of the 'I&B Code', functionally, the 'Resolution

Plan' must resolve insolvency (rescue a failing, but viable business); should maximise the value of assets of the 'Corporate Debtor', and should promote entrepreneurship, availability of credit, and balance the interests of all the stakeholders.

It is not a sale. *No one is selling or buying the 'Corporate Debtor' through a 'Resolution Plan'. It is resolution of the 'Corporate Debtor' as a going concern. One does not need a 'Resolution Plan' for selling the 'Corporate Debtor'. If it were a sale, one can put it on a trading platform. Whosoever pays the highest price would get it. There is no need for voting or application of mind for approving a 'Resolution Plan', as it will be sold at the highest price. One would not need 'Corporate Insolvency Resolution Process', 'Interim Resolution Professional', 'Resolution Professional', interim finance, calm period, essential services, Committee of Creditors or 'Resolution Applicant' and detailed, regulated process for the purpose of sale. It is possible that under a 'Resolution Plan', certain rights in the 'Corporate Debtor', or*

assets and liabilities of the 'Corporate Debtor' are exchanged, but that is incidental.

It is not an auction. *Depending on the facts and circumstances of the 'Corporate Debtor', 'Resolution Applicant' may propose a 'Resolution Plan' that entails change of management, technology, product portfolio or marketing strategy; acquisition or disposal of assets, undertaking or business; modification of capital structure or leverage; infusion of additional resources in cash or kind over time; etc. Each plan has a different likelihood of turnaround depending on credibility and track record of 'Resolution Applicant' and feasibility and viability of a 'Resolution Plan' are not amenable to bidding or auction. It requires application of mind by the 'Financial Creditors' who understand the business well.*

It is not recovery: *Recovery is an individual effort by a creditor to recover its dues through a process that has debtor and creditor on opposite sides. When creditors recover their dues – one after another or simultaneously- from the available assets*

of the firm, nothing may be left in due course. Thus, while recovery bleeds the 'Corporate Debtor' to death, resolution endeavors to keep the 'Corporate Debtor' alive. In fact, the 'I&B Code' prohibits and discourages recovery in several ways.

It is not liquidation: *Liquidation brings the life of a corporate to an end. It destroys organisational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The 'I&B Code', therefore, does not allow liquidation of a 'Corporate Debtor' directly. It allows liquidation only on failure of 'Corporate Insolvency Resolution Process'. It rather facilitates and encourages resolution in several ways."*

30. From the 'I&B Code', it will be evident that the 'Corporate Insolvency Resolution Process' is not a litigation and are not decided by Court of Law. Now, the 'Adjudicating Authority' deals with the matter of insolvency, which in its first stage is required to take steps for 'resolution' of the 'Corporate Debtor'. Therefore, the Adjudicating Authority being not a Court of law and

as the Adjudicating Authority do not decide a money claim or suit, it cannot exercise any of the power vested under Sections 3 or 4 of the 'Usurious Loans Act, 1918'.

31. 'The Presidency- Towns Insolvency Act, 1909' having repealed, and there being a bar of jurisdiction under Section 231 of the 'I&B Code' as no civil court have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered to decide under the Code, we hold that the provisions of Sections 3 & 4 of the 'Usurious Loans Act, 1918' are not applicable to any of the proceeding under Section 7 or 9 of the 'I&B Code'.

32. Further, as initiation of 'Corporate Insolvency Resolution Process' under Sections 7 or 9 do not amount to recovery proceedings, the question of deciding the claim, which may include the interest by the Adjudicating Authority does not arise for the purpose of triggering the 'Corporate Insolvency Resolution Process'.

33. In ***"Innoventive Industries Limited Vs. ICICI Bank and Another– (2018) 1 SCC 407"***, the Hon'ble Supreme Court observed and held as follows:

> "*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."

34. In the aforesaid background, if the application is complete and the Adjudicating Authority is satisfied that there is a debt due to the 'Financial

Creditor' and there is a default on the part of the 'Corporate Debtor', it has no other option but to admit the application in absence of any other infirmity.

35. For the reasons aforesaid, no interference is called for against the order(s) of admission which are under challenge in Company Appeal (AT) (Insolvency) No. 336 of 2017 and Company Appeal (AT) (Insolvency) No. 07 of 2018. This apart, in view of the decision of the Hon'ble Supreme Court in ***"Innoventive Industries Ltd. (Supra)"*** (Para No. 11), the appeal at the instance of the 'M/s. Avance Logistics & Trading India Pvt. Ltd.'-('Corporate Debtor') being not maintainable and is also liable to be dismissed.

36. In so far as Company Appeal (AT) (Insolvency) No. 10 of 2018 is concerned, the Adjudicating Authority having failed to notice that the 'Usurious Loans Act, 1918', is not applicable for initiation of 'Corporate Insolvency Resolution Process', we set aside the order dated 15th November, 2017, passed in the said appeal and remit the case to the Adjudicating Authority for hearing the application for admission after notice to the parties.

37. We make it clear that the application being complete and in absence of any other infirmity, and the 'Corporate Debtor' having not denied the debt and default, the Adjudicating Authority cannot reject the application preferred by the Appellant in Company Appeal (AT) (Insolvency) No. 10 of

2018. However, in the meantime, if the 'Corporate Debtor' clears the dues of the 'Financial Creditor', it will be open to the Adjudicating Authority not to admit the application.

38. In the results, Company Appeal (AT) (Insolvency) No. 336 of 2017 preferred by Mr. Naveen Luthra, and the Company Appeal (AT) (Insolvency) No. 07 of 2018 preferred by 'M/s. Avance Logistics & Trading India Pvt. Ltd.' are dismissed. The Company Appeal (AT) (Insolvency) No. 10 of 2018 preferred by 'Bell Finvest (India) Limited' is allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

29th November, 2018
AR