

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.30 of 2019

[Arising out of Order dated 11.12.2018 passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh in CP(IB) No.332/Chd/Pb/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

M/s. Ludhiana Scrips
Private Limited,
B-23, 2581/3B/1,
Industrial Area A,
Near Zoom Hotel Building
Ludhiana – 141004 (PB)
Through its Director and
Authorized Person
Sh. Neeraj Bakshi

Petitioner

Appellant

Versus

M/s. K.C. Land &
Finance Ltd.
Having its registered
office at Chandigarh
Road, K.C. Tower,
Nawanshahr,
SBS Nagar,
Nawanshahr - 144514

Respondent

Respondent

For Appellant:

**Dr. Rajansh Thukral, Dr. Surekha Thukral and
Shri Rinshikha Thukral, Advocates**

For Respondent:

**Shri Vinod Kumar Mahajan and Shri Ravinder
Joshi, Advocates**

J U D G E M E N T

A.I.S. Cheema, J. :

1. This Appeal has been filed by M/s. Ludhiana Scrips Private Limited – Financial Creditor as the Section 7 proceedings under Insolvency and Bankruptcy Code, 2016 (I&B Code) filed against the

Respondent – K.C. Land and Finance Limited – Corporate Debtor has been rejected by the Adjudicating Authority (NCLT) Chandigarh Bench, Chandigarh.

2. The Appellant filed the proceedings under Section 7 claiming that there was debt due from the Respondent and there was default.

3. It appears that the Appellant had granted inter corporate loan to the Respondent. The amounts were disbursed to the Respondent on various dates and post-dated cheques had been issued by the Respondent which bounced and criminal complaints were filed under Section - 138 of the Negotiable Instruments Act. The Appellant had also filed Petition for winding up before the Hon'ble High Court of Punjab and Haryana. It appears that thereafter between the parties, there was a settlement arrived at in writing on 20.05.2017 whereby the Respondent agreed to pay Rs.6,00,00,000/- which included interest for which again post-dated cheques were issued. Out of these cheques, only cheques to the tune of Rs.1.50 Crores got encashed and there was again unpaid balance of Rs.4.50 Crores.

4. It seems that the Appellant had earlier initiated CP(IB)122/Chd/Pb/2018 before the Adjudicating Authority at Chandigarh and the Adjudicating Authority held that the Appellant had failed to prove to be a Financial Creditor. It appears that CA 250/2018 seeking recall was also rejected on 23.05.2018.

5. After this, the Appellant entered into yet another agreement on 15th June, 2018 with the Respondent and the Respondent again issued
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post-dated cheques, which were again dishonoured, and the Appellant issued Notice to the Respondent – Corporate Debtor calling upon the Respondent to pay Rs.4.50 Crores with interest.

6. The Appellant filed CP(IB)332/Chd/PB/2018.

7. The Adjudicating Authority reasoned that the Appellant had not shown the books of accounts with entry of debiting interest in the account of Respondent and that the loan had been disbursed in 2013 and admittedly, there was no entry of debiting interest in any of the financial years except when dispute between parties arose. The Impugned Order shows that the Adjudicating Authority was irritated that in the Application filed under Section 7, the Appellant had not disclosed the earlier dismissal of the Petition and observed that the Petitioner could not file another Petition on same cause of action. When the Appellant pointed out the subsequent agreement dated 15.06.2018 and its contents, which showed agreement with regard to payment of the principal amount and interest, it was discarded by the Adjudicating Authority observing that the Appellant could not raise this contention without having disclosed the filing of Petition earlier in which the same transaction of 2013 and agreement dated 20.05.2017 was relied on and had been rejected by the Tribunal. The Adjudicating Authority found that the attempt to revive old claim based on subsequent agreement could not be acceded to. The Adjudicating Authority went on to reject the Application with exemplary costs of Rs.2 Lakhs.

8. We have heard the Counsel for both sides. The learned Counsel for the Respondent accepted that the Respondent had taken inter corporate deposit. The Counsel accepted that the Respondent had entered into yet another agreement dated 15th June, 2018 with the Appellant after dismissal of the earlier proceedings under Section 7. The Counsel stated that the second agreement entered into by the Respondent was to buy peace.

9. Some of the Clauses of the agreement dated 15th June, 2018 read as under:-

“A Company winding petition was filed before the Hon'ble Punjab & Haryana High Court by Part No.1 against Part No.2 which is pending adjudication.

There after it was agreed between the parties that Part no.2 i.e. K.C. Land & Finance Ltd will pay Rs.4.40 crores as principal amount and Rs.1.60 crores as interest. An agreement was executed between the parties on 20th May 2017 and various post dated cheques were issued.

The Part No.2 i.e. K.C. Land & Finance Ltd. defaulted in making payments and some of the cheques were dishonoured so now Total outstanding as on date is Rs.4,50,00,000/-. There has been meeting between the parties and has been agreed that Part No.2 i.e. M/s K.C. Land and Finance Ltd. has given following post dated cheques 1. Cheque no.024757 dated 20-06-2018 of Oriental Bank of Commerce Branch Ambedkar Chowk, Nawanshr for Rs.25,00,000/- 2. Cheque no. 024758 dated 25-7-2018 of Oriental Bank of Commerce, Branch Ambedkar Chowk Nawanshr for Rs.25,00,000/- 3. Cheque no. 024759 dated 20.12.2018 of Oriental Bank of Commerce, Branch Ambedkar Chowk, Nawanshr for Rs.1,00,00,000/- 4. Cheque No 024760 dated 31.12.2018 of Oriental bank of Commerce, Branch Ambedkar Chowk, Nawanshr for Rs. 3,00,00,000/-. Part No.2 i.e. M/s. K.C. Land and Finance Ltd. undertakes and assures that all these cheques will be

honoured in the event of default Part No 1 will be at liberty to enforce this agreement by way of initiating legal proceedings against the Part No 1 and the amount recoverable will be with interest @ 18% from the date of default till the realization of the full amount.”

10. The earlier Order of the Adjudicating Authority dated 23rd May, 2018 was passed referring to relying on the compromise agreement dated 20th May, 2017 to conclude that the debt could not be said to be financial debt.

11. We have seen that earlier compromise agreement dated 20.05.2017 and this subsequent agreement dated 15th June, 2018 clarified the transaction and nature of the agreement between the parties with regard to the dues and the above clauses in the agreement dated 15th June, 2018, show that the Appellant is Financial Creditor to whom the Respondent owes financial debt, and which is in default and the amount is more than Rs.1 Lakh. In such contingency, we find it to be totally inappropriate on the part of the Adjudicating Authority to shut its eyes to the Agreement dated 15.06.2018 and to have thrown out all the claims of the Appellant on the basis that reference to the earlier rejection of the Company Petition 122/2018 had not been made. When the Petition was filed based on the subsequent agreement, such stand on the part of the Adjudicating Authority cannot be maintained. The Respondent has even in the Reply (Diary No.10319) accepted entering into this fresh agreement dated 15th June, 2018.

12. We are thus, unable to uphold the Impugned Order. The Application under Section 7 of I&B Code could not have been rejected on such grounds as mentioned by the Adjudicating Authority. Nothing else is pointed out to question the Form submitted. Form submitted under Section 7 of I&B Code being complete, the same should have been admitted.

13. We set aside the Impugned Order. The matter is remitted back to the Adjudicating Authority – NCLT, Chandigarh. On receipt of this Order, the Adjudicating Authority is directed to admit the Section 7 - I&B Code proceeding and pass further necessary orders as required under the I&B Code. However, it will be open to the Respondent to settle the matter in the meantime.

The Appeal is allowed with aforesaid observation and direction.

[Justice S.J. Mukhopadhyaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

New Delhi

2nd May, 2019

/rs/sk