**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 51 of 2019**

**IN THE MATTER OF:**

**IDBI Bank Ltd.** **...Appellant**

**Versus**

**Odisha Slurry Pipeline Infrastructure Ltd.** **...Respondent**

**Present:**

**For Appellant :** **Mr. Arun Kathpalia, Senior Advocate assisted by Mr. Shantanu Chaturvedi, Ms. Srishti Khare, Ms. Misha and Ms. Charu, Advocates**

**For Respondent :** **Mr. Amar Dave and Ms. Neeha Nagpal, Advocates**

**O R D E R**

**15.01.2019** The appellant - 'financial creditor' filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, the 'I&B Code') on 12th March, 2018 before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata but without hearing the Adjudicating Authority adjourned the appeal number of times for one or other reason such as filing reply or filing of rejoinder. Till date no final order has been passed though more than 10 months have passed. In view of non-disposal of application under Section 7, the appeal has been preferred by 'Financial Creditor' against the order of adjournment, which has been adjourned for 16th January, 2019.

It has come to our notice that the 'corporate debtor' is from the state of 'Odisha' and the matter may be transferred to 'National Company Law Tribunal', Cuttack Bench which is likely to be opened on 22nd January, 2019. Therefore,

we are of the view that order under Section 7 required to be passed before the case is transferred and thereby prolongs.

It is needless to say that if there is a 'debt' and 'default' and the record is otherwise complete, the application is to be admitted. On the other hand, if there is no 'debt' payable in law or in fact then it is to be rejected. In that view of the matter we are not passing any specific directions, as the matter will be taken up on 16th January, 2019 we expect that the Adjudicating Authority (National Company Law Tribunal), Kolkata will pass appropriate order either admitting or rejecting the application under Section 7 of the I&B Code taking into the consideration of the decision of the Hon'ble Supreme in '***M/s. Innoventive Industries Ltd. Vs. ICICI Bank Ltd. – (2018) 1 SCC 407'***, wherein Hon'ble Supreme Court observed 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 subsection (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.*

29. *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit*

*or arbitration proceedings, which is pre-existing — i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

Further, we may observe that except the applicant (financial creditor) and the 'corporate debtor', there is no requirement of hearing a third party including Intervenor at the stage of admission. The order is required to be passed as per decision of by the Hon'ble Supreme Court, as quoted above. The appeal stands disposed of with aforesaid observations and directions. No cost.

Let a copy of this order be forwarded to the Hon'ble President, National Company Law Tribunal, New Delhi and Mr. Jinan K.R., Member (Judicial) and Mr. Madan B. Gosavi, Member (Judicial), National Company Law Tribunal, Kolkata Bench, Kolkata for information.

[Justice S.J. Mukhopadhaya]
Chairperson

[ Justice Bansi Lal Bhat ]
Member (Judicial)

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