

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 237 of 2017

IN THE MATTER OF:

1. **Mintri Tea Company Limited,**

Represented by its Director,
Shri Krishna Kumar Mintri,
S/o Onkar Mal Mintri,
R/o Mintri Complex,
Sevoke Road,
Siliguri- 734 001

2. **Bhavesh Mintri,**

S/o Krishna Kumar Mintri,
R/o Mintri Complex,
Sevoke Road,
Siliguri- 734 001

3. **Purnima Mintri,**

D/o Krishna Kumar Mintri,
R/o Mintri Complex,
Sevoke Road,
Siliguri- 734 001

4. **Shiwaani Mintri,**

D/o Krishna Kumar Mintri,
R/o Mintri Complex,
Sevoke Road,
Siliguri- 734 001

.. Appellants

Versus

1. **Punjab National Bank,**

Having its registered and Corporate Office at
7, Bhikhaji Cama Place,
New Delhi – 110 607

.. Respondent

Present:

For Appellants: Ms. Aanchal Tikmani, Advocate

For Respondent: Shri Rajesh Kumar Gautam and Ms. Khushboo Agarwal, Advocates

Judgement

Sudhansu Jyoti Mukhopadhyaya, J:

The Appellant(s) Mintri Tea Company Limited (Corporate Debtor) along with others (shareholders) have preferred this appeal against the order dated 20th September, 2017 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) whereby and whereunder the application preferred by Respondent- Punjab National Bank (Operational Creditor) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **I&B Code**) r/w Rule 4 of Insolvency and Bankruptcy Code, (Application to Adjudicating Authority) Rules, 2016, has been admitted, order of Moratorium has been passed, Interim Resolution Professional has been appointed with directions as mentioned therein.

2. The case of the Appellant(s) is that the 'Corporate Debtor' having failed to pay the debt amount, 'Financial Creditor' initiated notice under sub Section (2) of Section 3 of SARFAESI Act, 2002 demanding payment of Rs. 8,92,68,513.80 (Rupees Eight Crores, Ninety-two Lakhs, Sixty-eight Thousand Five Hundred Thirteen and paise Eighty only) within 60 days.

3. In reply to the notice, the Appellant(s) while pointing out the illegality being contrary to the provisions of Section 31 of SARFAESI Act, approached the 'Financial Creditor', who informed that the notice was issued by mistake and were ready to restructure the loan account of the 1st Applicant.

Accordingly, on 25th September, 2013 restructuring of the loan amount of the 1st Appellant took place.

4. Learned Counsel for the Appellant(s) submitted that in spite of same, 'Financial Creditor' suddenly moved an application under Section 7 of I & B Code, 2016 alleging default of Rs. 10,37,69,840.06 (Rupees Ten Crores, Thirty-seven Lakhs, Sixty-nine Thousands, Eight Hundreds Forty and paise six only) on the 1st Appellant. No explanation has been provided in the said application for arriving at such figure.

5. It was submitted that 5 (five) months earlier the amount was shown to be Rs. 7,62,64,904.80 (Rupees Seven Crores, Sixty-two Lakhs, Sixty-four thousands Nine hundreds four paise eighty only) as on 6th February, 2017 and merely after five months, higher amount of Rs. 10,37,69,840.06 (Rupees Ten Crores, Thirty-seven Lakhs, Sixty-nine Thousands, Eight Hundreds Forty and paise six only) have been shown to be due.

6. It was submitted that there was a mismatch between amounts demanded and shown in the petition under Section 7 of I & B Code, 2016 and thereby as mismatching statements have been given, the application was fit to be rejected.

7. Learned Counsel for the Respondent have disputed the aforesaid plea taken by the Appellant(s). Learned Counsel for the 'Financial Creditor' submitted that the Term Loan and other loans were properly calculated after

calculating the interest upto the date of filing of the application under Section 7 of the I&B Code.

8. Learned Counsel for the Appellant(s) provided the break-up of the amount claimed to suggest that there was a mismatching of amount but were not inclined to decide such question whether there was mismatch in the amount or not for the reasons stated below.

Section 7 of I & B Code fell for consideration of Hon'ble Supreme Court in "***Innovative Industries Ltd. Vs. ICICI Bank***" – 2017 SCC online SC 1025. In the said case, the Hon'ble Supreme Court held:

1.

"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.” ...

The Hon’ble Supreme Court further held:

“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.”

9. In the present case, it is not disputed that there is a debt due and default has accrued. The Appellant(s), including the Corporate Debtor, has not claimed that default has not occurred in the sense that the “debt” includes disputed claim but not due. It is also not the case of the Appellant(s) that the debt is not due nor payable in law or in fact. The amount of debt, which is the claim amount will always vary with the default of debt amount which may be part of the claim and total amount and may include interest.

10. In the present case as we find that the Respondent on calculation of interest have shown the amount due and default taken place, such records placed before the Adjudicating Authority and record being complete if the application under Section 7 of the I & B Code has been entertained as admitted, no interference is called for. We find no merit in this appeal. It is

accordingly dismissed. However, in the facts and circumstances of the case, there shall be no orders to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Dated: 22nd December, 2017

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