

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1164 of 2019

IN THE MATTER OF:

B.D. Motors Ltd.

...Appellant

Versus

Monotrone Leasing Pvt. Ltd.

...Respondent

For Appellant: Shri Subasish Sen Gupta, Ms. Suchita Mukhopadhyay and Shri Avirup Chatterjee, Advocates

For Respondent: None

ORDER

08.11.2019 Heard. Delay in refiling is condoned. IA No.3398 of 2019 is disposed of.

Heard learned Counsel for the Appellant. Perused record. The Appellant is Corporate Debtor who appeared before the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata in Company Petition (IB) No.188/KB/2019). The Counsel states that the Corporate Debtor has disputed the letter dated 14th June, 2017 (copy of which has been produced by the Financial Creditor) on the basis of which Section 7 Application has been filed by the Financial Creditor. It is stated that the Corporate Debtor filed CA (IB) 1023/KB/2019 for production of the concerned letter and sending the same to Handwriting Expert.

The Adjudicating Authority passed the following Order:-

“ORDER

Ld. Counsel appears for the financial creditor.
Ld. Counsel appears for the corporate debtor. Corporate Debtor did not file affidavit-in-reply, in spite of

opportunities. Matter is already proceeded ex parte against them. CA(IB)1023/KB/2019 is filed by the corporate debtor asking the financial creditor to produce original letter dated 14.06.2017 produced by the financial creditor at page no.19.

We heard the Ld. Counsel for the corporate debtor and for the financial creditor. Letter dated 24.06.2017 appears to be copy of the corporate debtor's letter. According to the corporate debtor, it is a forged letter. If it is so, corporate debtor is free to take defence but cannot deny to file W/S within time. If corporate debtor is interested to file W/S, it may be filed within three days subject to payment of cost of Rs.25,000/- to the financial creditor. If reply is filed, copy be given to the other side and Financial Creditor to file rejoinder within seven days. CA(IB)1023/KB/19 stands disposed off. Matter to appear on 23.09.2019 for further consideration.”

Learned Counsel states that the Corporate Debtor has already filed the written submissions and also deposited the costs. The grievance of the Counsel is that the Application for production of the original letter and getting the same examined from Handwriting Expert has been disposed of.

Looking to the nature of proceedings which are before the Adjudicating Authority and the scope in such matters, keeping in view the observations made by the Hon'ble Supreme Court in the matter of **“Innoventive Industries Ltd. v. ICICI Bank & Anr.”** – (2018) 1 SCC 407 where in para – 28, it was observed:-

“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 Adjudicating Authority is required to consider the Section 7 Application which is filed in format and if it is found that it is complete and there is debt and default, it has to be admitted. The proceedings cannot be converted as if it is some Civil Suit. The Appellant was permitted to put up its defence which the Adjudicating Authority had to consider and decide hearing the parties on the basis of record as put up by the Financial Creditor and put

up by the Corporate Debtor, keeping in view provisions of the Insolvency and Bankruptcy Code, 2016 and Judgement of the Hon'ble Supreme Court.

For such reasons, we do not find any error in the Impugned Order where it has disposed of the CA 1023/KB/2019. We decline to admit the Appeal. The Appeal is disposed of.

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

[Kanthi Narahari]
Member (Technical)

[V.P. Singh]
Member (Technical)

/rs/gc