

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 204 of 2020

IN THE MATTER OF:

Urban Infrastructure Trustees Ltd.

...Appellant

Versus

Ozone Propex Pvt. Ltd.

...Respondent

Present:

For Appellant: **Mr. Arun Kathpalia, Senior Advocate with
Mr. Raghav Chadha, Ms. Apoorva Gupta and
Mr. Kauser Husain, Advocates.**

For Respondent: **Mr. Kumar Kisley, Advocate.**

ORDER

03.02.2020 Heard Mr. Arun Kathpalia, learned Senior Counsel appearing on behalf of the Appellant and Mr. Kumar Kisley, learned Counsel who appeared on behalf of the Respondent before the National Company Law Tribunal.

2. The Appellant has challenged the order dated 17th December, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, which reads as follows: -

“Heard Shri Arun Kumar, learned Sr. Counsel along with Ms. Anusha Jacob, Ms. Jomol Joy, learned Counsel for the Petitioner and Shri S.S. Naganand, learned Sr. Counsel along with Shri Dheeraj Nair, Shri Perikal K Arjun, Shri Kumar Kisley, Shri Atual Madhavan, learned Counsel for the Respondents and Applicants in I.A. Nos.229 & 230/2019.

The case is kept pending because of Sub-judice since the matter is pending before the Hon’ble High Court of Karnataka. Therefore, we are inclined to take up the

matter after Hon'ble High Court of Karnataka decides the issue. In the meanwhile, parties are at liberty to make mention subject to order passed by the Hon'ble High Court of Karnataka. Post the case on 28.01.2020."

3. The grievance of the Appellant is that the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') is pending for one year since January 2019.

4. In the circumstances, while we are not inclined to interfere with the impugned order, direct the Adjudicating Authority to decide the Application under Section 7 of the I&B Code in terms of decision of the Hon'ble Supreme Court in **"Innoventive Industries Ltd. Vs. ICICI Bank and Anr. – (2018) 1 SCC 407"**, relevant portion of which is extracted below: -

"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 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.”

5. In absence of any stay order passed by the Hon’ble High Court of Karnataka and as per the aforesaid decision of the Hon’ble Supreme Court, the application under Section 7 of the I&B Code should have been decided within 14 days. The Appeal stands disposed of. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

Ash/GC