

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

Company Appeal (AT) (Insolvency) No. 1251 of 2019

IN THE MATTER OF:

Arunkant Rai

S/o Mr. Chandrahas Rai,

R/o 121, Bapji nagar,

Near Soumya Vehilces Showroom

Indore – 452010.

...Appellant

Versus

1. Allahabad Bank

Office at: Palasia Main Branch,

Janjeerwala Square,

Indore – 452001.

2. Suman Agritech Limited

Through Interim Resolution Professional

Mr. Navin Khandelwal

[Registration No.

IBBI/IPA-001/IP-P00703/2017-18/11301]

302, Devkrupa Building,

28, Raichur Street,

Mumbai – 400009.

...Respondents

Present:

For Appellant: Mr. Siddhartha Jain, Advocate.

**For Respondent: Ms. Anjali Sharma and Ms. Ragini Vinaik, Advocates
for Respondent No.2.**

ORDER

11.02.2020 Heard learned counsel for the Appellant Mr. Siddhartha Jain and Ms. Anjali Sharma, Advocate on behalf of Respondent No. 2 – ‘Interim Resolution Professional’

2. The Appellant has filed Appeal against the impugned order dated 27th August, 2019 passed in CP 1003 (IB) / MB / 2019 by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench.

3. The Adjudicating Authority admitted the application under Section 7 of the ‘Insolvency and Bankruptcy Code, 2016’ filed by the Respondent No. 1 Allahabad Bank and ‘Corporate Insolvency Resolution Process’ (CIRP) was initiated.

4. The present Appeal has been filed raising grievances that the Allahabad Bank was part of Consortium in which the leading Bank was IDBI and Allahabad Bank. Reference is made to Inter-se Agreement between these Banks as at Annexure A-9 page 240 dated 15th November, 2010 and Consortium Agreement which is also of the same date and copy of which is at page no. 255.

5. The learned counsel for the Appellant is submitting that as per these documents entered in to by the Allahabad Bank and IDBI, if Allahabad Bank wanted to take action, permission of IDBI Bank should have been taken giving 15 days notice to IDBI Bank.

6. It is stated that it was necessary that Respondent No. 1 Allahabad Bank should have given notice and only thereafter it could have filed the application under Section 7 of the ‘**I&B Code, 2016**’.

7. Learned counsel for the Respondent No. 2 states that Allahabad Bank had declared 'NPA' with regard to debt on 30th September, 2016 and filed application under Section 7 of the '**I&B Code, 2016**' on 11th March, 2019, which it was bound to.

8. Learned counsel for the Respondent is relying on the Judgment of this Tribunal in the matter of ***Oriental Bank of Commerce Vs. M/s Ruchi Global Limited in Company Appeal (AT) (Insolvency) No. 387 of 2019 passed on 31.01.2020*** :

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“ 7. Heard Counsel for both sides. The Inter-se Agreement between the Banks was restricted to the Banks and Corporate Debtor was not part of the Inter-se Agreement. This fact is not in dispute. Learned Counsel for the Appellant has pointed out para 7 (xxii) of the Appeal to submit that the account of the Respondent Corporate Debtor remained out of order in the books of Appellant Bank who was regular in the books of other member Banks. Appellant states that as per the guidelines of the Reserve Bank of India, It was the Appellant only who classified the account of the Respondent as NPA as on 31st August, 2017. The Learned Counsel has referred to notice dated 05th September, 2017 sent by the Appellant in this regard to the Corporate Debtor (Page 404). According to the Learned Counsel when the account of the Appellant Bank became NPA, it was bound to take action against Corporate Debtor.

8. In our view the Agreement being Inter-se between the Banks the Corporate Debtor cannot take benefit of the Clauses in that agreement, which are binding only the Banks. If there is a default by any member of the Consortium, it would be a matter for the other banks to be aggrieved with and Corporate Debtor cannot take benefit of the same to raise grievance. If the Appellant Bank did not act in tune with the Consortium Agreement it may be matter of consideration for the other Bank/s of the Consortium and/or Reserve Bank of India. However, there is nothing which Bars filing of Section 7 of IBC Application by the Appellant. Even if there was Clause that the Bank which wants to take action should give notice of 30 days, if notice was not given that would be a matter for the Lead bank to look into. That does not create Bar for the Appellant Bank to move Application under Section 7 of IBC. In judgement in the matter of **“Asian Natural Resources (India) Ltd. & Anr. Vs. IDBI Bank Ltd.”** this Tribunal has held in para 7 of the Judgment as under:

“7. Apart from that the Inter-se Agreement between different Banks is not binding in nature, the ‘Corporate Debtors’ not being signatories cannot derive advantage of such Inter se Agreement. This apart, the ‘financial creditors’ having right to file application under Section 7 of the I&B Code, individually or jointly on behalf of

other ‘financial creditors’ as quoted below, the Inter se Agreement between the ‘financial creditors’ cannot override the said provision, nor can take away the right of any Financial Institution to file application under Section 7 of the I&B Code.”

9. We are in Agreement with the observations made by the Hon’ble Bench of this Tribunal as above. We find that the judgement of the Adjudicating Authority in dismissing the Application under Section 7 because of the Consortium Agreement cannot be maintained.

9. For the reasons mentioned above, we do not find any reason here also in the present Appeal to interfere. Here also there is Consortium Agreement between the Banks to which the ‘Corporate Debtor’ was not party.

There is no bar in law for the Bank which has declared ‘NPA’ to proceed and file proceedings under Section 7 of the **‘I&B Code, 2016’**, notwithstanding consortium agreement between Banks. There is no substance in the Appeal. The Appeal is dismissed. No order as to costs.

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

[Justice A.B. Singh]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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