

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) (Ins) No. 103 of 2023

IN THE MATTER OF:

Insolvency & Bankruptcy Board of India

... Appellant

Vs.

GTL Infrastructure & Ors.

... Respondents

Present:

For Appellant:- Mr. Ashish Verma, Adv.

**For Respondent:- Mr. Ninad Laud, Mr. Atharv Gupta & Rashika Narain,
Adv.**

O R D E R

Per: Justice Rakesh Kumar Jain: (Oral)

07.02.2023: The Respondent No. 2 (Canara Bank) filed a Company Petition bearing CP (IB) No. 4541(MB) of 2019 before the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Respondent No. 1 (GTL Infrastructure Limited)/(Corporate Debtor) for the resolution of an amount of Rs. 646,38,06,271.00 as on 01.07.2011.

2. Corporate Debtor also filed I.A. No. 677 of 2020 on 21.02.2022 seeking dismissal of the aforesaid petition on account of lack of authorization in favour of the authorized signatory of the Respondent No. 2. The aforesaid petition was dismissed vide the impugned order dated 18.11.2022 and I.A. No. 677 of 2020 was dismissed as infructuous. The relevant portion of the impugned order is reproduced as under:-

“11. After hearing both the parties and on perusal of the IA/677/2020 and CP(IB)4541(MB)/2019 including other material on record and the Judgement of Hon’ble Supreme Court in Vidarbha Industries (Supra), we are of the view that the Corporate Debtor has monthly revenues of INR 120 Crores (net of GST), which shows that the Corporate Debtor is a viable going concern. Further, the Corporate Debtor has repaid an amount of INR 16,915 Crores between 2011 to August, 2018, which clears that the position of the Corporate Debtor is reasonably healthy and is in a position to repay the sustainable debt. The Corporate Debtor has claims aggregating to INR 13,393.83 Crores against Aircel entities. Further, this Tribunal has directed to pay approx. INR 900 Crores to the Corporate Debtor, same has been pending on appeal. Moreover, the Corporate Debtor has to recover INR 49.84 Crores from Tata Teleservices Limited; INR 20.38 Crores from ATC and INR 351 from BSNL in pending arbitration proceeding. The amount received would be sufficient to pay the debt of the Petitioner.

The ratio of the Vidarbha Industries is squarely applicable to the present case as the business of the Corporate Debtor is sustainable and it is a viable going concern under its current management and the overall financial health of the Corporate Debtor is not bad enough to be admitted under CIRP. Moreover, the adjudicated and un-adjudicated claims of the Corporate Debtor are far more than the debt claimed in the present petition. So, in view of Judgement of the Hon’ble Supreme Court in Vidarbha Industries Power Limited Vs. Axis Bank Limited, we are of the opinion that the present petition should be dismissed. Hence, the CP(IB)/4541/2019 is dismissed.

Since the Petition is dismissed, therefore this bench refrain to express any opinion on merit as to whether the Petitioner is properly authorized to file petition or not. In view of the same IA/677/2020 is dismissed as infructuous.”

3. Two appeals under Section 61 of the Code have already been filed i.e. CA (AT) (Ins) No. 68 of 2023 'Canara Bank Vs. GTL Infrastructure Ltd.' and CA (AT) (Ins) No. 69 of 2023 'Canara Bank Vs. GTL Ltd.', in which an order has been passed on 24.01.2023 which read as under:-

"Issue notice.

Counsel for the Caveators accept notice and prays for an adjournment to file reply. Let the reply be filed on or before 21st February, 2023 with an advance copy to Counsel for Appellant who may, if so advised, file the rejoinder, if any, on or before 7th March, 2023. List these appeals for hearing on 17th March, 2023."

4. The present appeal has been filed by the Insolvency and Bankruptcy Board of India impleading GTL Infrastructure Limited as Respondent and Canara Bank as Performa Respondent. It is averred in the appeal that the Appellant is responsible for the enforcement of various rules and regulations concerning the corporate insolvency resolution and amongst others. Therefore, it becomes imperative for the Appellant to file the instant appeal as the impugned order is based on an incorrect interpretation of the provisions of Insolvency & Bankruptcy Code, inter alia Section 7.

5. At the outset, Counsel for the Appellant has been asked as to how the Appellant Board is an aggrieved person especially when the aggrieved person (Canara Bank) has already filed the appeals i.e. CA (AT) (Ins) No. 68 & 69 of 2023. In merely requested that the present appeal may be renotified to be heard alongwith aforesaid two appeals on 17.03.2023. However, from the perusal of the memorandum of appeal, we could not find the cause of concern much less the grievance of the Appellant for preferring the present appeal

especially when the appeals have already been filed by the aggrieved person. In this regard, we may also refer to an order passed by this Tribunal in the case of Insolvency and Bankruptcy Board of India Vs. Wig Associates Pvt. Ltd. & Ors., 2018 SCC Online NCLAT 386, in which the Tribunal has recorded its displeasure while noticing the fact that the appeal has been filed by the board as an aggrieved person which was held to be not maintainable.

6. In our considered opinion as well, the Appellant has nothing to do with the litigation between two parties i.e. 'Financial Creditor' and 'Corporate Debtor', in order to challenge the impugned order by which the petition filed by the Financial Creditor has been dismissed for whatever reasons.

7. The appeal is thus totally misconceived and not maintainable and hence, the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Sheetal