

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1005 of 2022

IN THE MATTER OF:

Reliance Commercial Finance Limited,
(Formerly known as Reliance Capital Limited)
7th Floor, B-Wing, Trade World,
Kamala Mills Compound, S.B. Marg,
Lower Parel Mumbai - 400013

...Appellant

Versus

Darode Jog Builder Private Limited,
Darode Jog House,
1212, Apte Road,
Deccan Gymkhana,
Pune-411004

...Respondent

Present:

For Appellant: Mr. Nikhil Nayyar, Sr. Advocate with Mr. Mahesh Agarwal, Ms. Himanshu Satija, Ms. Geetika Sharma, Mr. Shivam Shukla and Mr. Archit Jain, Advocates.
For Respondent: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Agam H. Maloo, Mr. Abhinav Agarwal, Ms. Shruti Pandey and Mr. Kaustubh Kandpile, Advocates.

ORDER

Ashok Bhushan, J:

1. This Appeal has been filed by the Financial Creditor against the Order dated 11th July, 2022 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-III) in CP(IB) 498/MB/2020.
2. Brief facts of the case necessary to be noticed for deciding this Appeal are:
 - The Appellant-Financial Creditor has sanctioned Term-Loan of Rs. 10.5 Crores and Rs. 8.5 Crores to the Corporate Debtor on 29th July, 2013.

On 17th March, 2017 and 25th February, 2017 respectively the Loan Account of the Corporate Debtor in respect to above noted sanctioned Term-Loan were declared Non-Performing Assets.

- On 04.11.2019, the Appellant preferred Section 7 Application (C.P. (IB) 498/MB/2020) in which an Amount of Rs. 15,79,41,658/- was claimed as 'due and payable' by the Corporate Debtor.
- The Company Petition was adjourned on several occasions. On 06th July, 2022 during hearing of the Company Petition, Corporate Debtor acknowledged its liability to pay and made an offer of Rs. 12.75 Crores to be paid within 45 days. The Adjudicating Authority on 06th July, 2022 directed the Learned Counsel for the Financial Creditor to obtain appropriate instructions. It was also observed that if the Settlement did not take place, the Company Petition would automatically be admitted on the next date of hearing.
- On the next date of hearing i.e. 11th July, 2022, the Corporate Debtor submitted that Corporate Debtor is ready and willing to deposit the entire amount of Rs. 15,79,41,658/- within 45 days. Learned Counsel for the Financial Creditor submitted that Financial Creditor is not willing to settle the matter. The Adjudicating Authority after obtaining the details of the Bank Account of the Financial Creditor ordered that if the Corporate Debtor does not deposit within 45 days the said amount, the Financial Creditor shall be at liberty to file Application for restoration of the Company Petition, the Company Petition was disposed of.

- Aggrieved by the Order dated 11th July, 2022, the Financial Creditor has come up in this Appeal.

3. Mr. Nikhil Nayyar, Sr. Advocate appearing for the Appellant submits that the Adjudicating Authority committed error in disposing of the Company Petition whereas the Financial Creditor has expressed its unwillingness to settle the matter with the Corporate Debtor. It is submitted that the Adjudicating Authority could not have permitted the Corporate Debtor to deposit the amount in the Bank Account of the Financial Creditor.

4. Mr. Ramji Srinivasan, Sr. Advocate for the Respondent refuting the submissions of Learned Sr. Counsel for the Appellant submits that the Learned Counsel for the Financial Creditor on 11th July, 2022 made the statement that they are not willing to settle the matter since they have no confidence on the Corporate Debtor in view of the past conduct of the Corporate Debtor. It is submitted that the unwillingness is only due to the reason that Corporate Debtor was not offering the entire amount and further has not settled the matter in spite of taking several adjournments. It is further submitted that Respondent has financial capacity to deposit the entire amount. Learned Counsel for the Respondent has produced the photocopy of Bank Drafts totalling to an amount of Rs. 15,79,41,658/- in the name of the Appellant, prepared dated 23rd August, 2022/22nd August, 2022.

5. We have considered the submissions of Learned Counsel for the parties and have perused the record.

6. In the present case, Section 7 Application was filed claiming an amount of Rs. 15,79,41,658/-. On the earlier date, when the Company Petition was

taken i.e. on 06th July, 2022, Corporate Debtor came with an offer of Rs. 12.75 Crores to be paid within 45 days on which, Court directed the Financial Creditor to obtain instructions. Amount of Rs. 12.75 Crores which was offered on 06th July, 2022 by the Corporate Debtor was not the entire amount claimed by the Financial Creditor in the Application. But on the next date i.e. 11th July, 2022, when the case was taken, Learned Counsel for the Corporate Debtor submitted that Corporate Debtor is now ready to deposit the entire amount within 45 days. The Adjudicating Authority noticed the submission of Learned Counsel for the Financial Creditor which was to the following effect:

“...Mr. Ayush J. Rajani, Counsel appearing for the Financial Creditor submitted that the Financial Creditor is not willing to settle the matter as they have no confidence on the Corporate Debtor in view of the past conduct of the Corporate Debtor...”

7. Immediately after noticing the above statement of Learned Counsel for the Financial Creditor, the statement of Learned Counsel for the Corporate Debtor has been recorded to the following effect:

“...After making the above statement by counsel appearing for the Financial Creditor, Mr. Prakhar Tandon, Counsel appearing for the Corporate Debtor on instructions assured the Financial Creditor as well as this Bench that his client is ready and willing to deposit the entire amount of Rs. 15,79,41,658/- claimed in the above Company Petition, instead of Rs.

12.75 Crores offered earlier within 45 days from today....”

8. The Adjudicating Authority after noticing the aforesaid statements, passed over the matter and asked the Financial Creditor to furnish the Bank Account which details were given and the Adjudicating Authority giving details of the Account in the Order, directed the Corporate Debtor to deposit the amount within 45 days.

9. Submission of the Appellant is that since the Appellant expressed its unwillingness to settle the matter, the course adopted by the Adjudicating Authority is impermissible. The present is a case where the Adjudicating Authority has not directed the Financial Creditor to enter into settlement with the Corporate Debtor, the Adjudicating Authority has only recorded the statements of the Corporate Debtor that they are ready to deposit the entire defaulted amount within 45 days and has permitted the Corporate Debtor to deposit the amount within 45 days. The Adjudicating Authority by the same order has also granted liberty to the Financial Creditor to revive the Company Petition if the amount is not paid within 45 days.

10. In a recent Judgement, Hon'ble Supreme Court had occasion to consider the jurisdiction of the Adjudicating Authority while considering the Section 7 Application i.e. Judgment of the Supreme Court dated 12th July, 2022 in Civil Appeal No. 4633 of 2021 in the matter of **“Vidarbha Industries Power Limited Vs. Axis Bank Limited”**. In the case before the Supreme Court, Section 7 Application was admitted by the Adjudicating Authority against which an Appeal was filed before the NCLAT where the prayer to stay the

initiation of Section 7 Proceeding was refused. Challenging the Order of the Appellate Tribunal, the Appeal was filed before the Supreme Court where Hon'ble Supreme Court had occasion to consider the ambit and scope of Section 7 of the IBC, 2016.

11. Hon'ble Supreme Court in paragraph 56 of the Judgement noticed the following:

“56. Both, the Adjudicating Authority (NCLT) and the Appellate Tribunal (NCLAT) proceeded on the premises that an application must necessarily be entertained under Section 7(5)(a) of the IBC, if a debt existed and the Corporate Debtor was in default of payment of debt. In other words, the Adjudicating Authority (NCLT) found Section 7(5) (a) of the IBC to be mandatory. The Adjudicating Authority (NCLT) was of the view that Section 7(5)(a) did not admit any other interpretation, with which the Appellate Tribunal (NCLAT) agreed.”

12. Hon'ble Supreme Court did not approve the view of the Adjudicating Authority that what is required to be seen in Section 7 Application is debt and default and on satisfaction of debt and default, the 'Corporate Insolvency Resolution Process' (CIRP in short) would trigger. Supreme Court held that even after debt and default is there, Adjudicating Authority has to require to apply its mind to relevant factors including the feasibility of the initiation of CIRP. In paragraph 61 and 62 of the Judgment, following has been observed:

“61. In our view, the Appellate Authority (NCLAT) erred in holding that the Adjudicating Authority (NCLT) was only required to see whether there had been a debt and the Corporate Debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The Adjudicating Authority (NCLT) was require to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC’s appeal, pending in this Court, order of APTEL referred to above and the over all financial health and viability of the Corporate Debtor under its existing management.

62. As pointed out by Mr. Gupta, Legislature has, in its wisdom, chosen to use the expression “may” in Section 7(5)(a) of the IBC. When an Adjudicating Authority (NCLT) is satisfied that a default has occurred and the application of a Financial Creditor is complete and there are no disciplinary proceedings against proposed resolution professional, it may by order admit the

application. Legislative intent is construed in accordance with the language used in the statute.”

13. In the facts of the above case, the Supreme Court set aside the Order of the Adjudicating Authority and the Appellate Tribunal and remanded the matter to the Adjudicating Authority to reconsider the Section 7 Application. In the facts of the present case, the Adjudicating Authority has only given an opportunity to the Corporate Debtor to deposit the entire defaulted amount for which Section 7 Application was filed, within 45 days with liberty reserve to the Financial Creditor to revive the Section 7 Application in event the amount is not deposited.

14. In event, in consequence of the Order of the Adjudicating Authority, the Corporate Debtor deposits the entire defaulted amount whether still the Adjudicating Authority was required to necessarily admit the Section 7 Application. The answer would be obviously no. When the Corporate Debtor has complied to deposit the entire defaulted amount of the Financial Creditor as permitted by the Adjudicating Authority, no purpose and occasion shall survive to still proceed with the Insolvency Resolution of the Corporate Debtor. The proceeding under Section 7 are proceeding for resolution of the insolvency of the Corporate Debtor. We do not find any error in the course adopted by the Adjudicating Authority to ascertain as to whether the Corporate Debtor can comply to deposit the entire defaulted amount in the Bank Account of the Financial Creditor.

15. The interest of the Financial Creditor is fully protected since liberty has already been granted to the Financial Creditor to revive the Application under

Section 7 of the IBC, 2016 in event, the amount is not deposited within 45 days. We thus do not find any good ground to interfere with the Order impugned in the present Appeal. In event, the Corporate Debtor does not deposit the amount, it is always open for the Financial Creditor to approach the Adjudicating Authority as per liberty granted by the Adjudicating Authority.

With the above observations, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Mr. Barun Mitra]
Member (Technical)

New Delhi
19th September, 2022.
Basant