

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Insolvency) No. 894 of 2019

IN THE MATTER OF:

Manjeet Kaur Sran

.....Appellant

Vs.

Tricolite Electrical Industries Ltd.

.....Respondents

Present :

For Appellant: Mr. Vipul Srivastava, Mr. Rajindra Vats, Mr. Sidhartha Masson, Advocates

For Respondents: Mr. Shikhil Suri, Mr. Shiv Kumar Suri, Ms. Shilpa Saini, Ms. Nikita Thapar, Respondents

O R D E R

02.09.2019 - M/s 'Tricolite Electrical Industries Ltd.' ('Operational Creditor') filed application u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) against M/s. 'HBN Homes Colonisers Private Limited' ('Corporate Debtor'). The Adjudicating Authority ('National Company Law Tribunal') Court No. IV, New Delhi by Impugned order dated 24th July, 2019 having admitted the same. The appeal has been preferred by Appellant – shareholder.

2. Learned counsel for the Appellant submits that the claim is 'barred by limitation' and in fact no amount was payable. However, from the record, we find the following facts emerge.

3. The Respondent ('Financial Creditor') raised various invoices of the 'Corporate Debtor' to the tune of Rs. 3,21,24,511/- and further transferred the amount to M/s Mitelite Electric Company Private Limited' which is a sister concern of the Respondent-'Corporate Debtor' on behalf of the 'Corporate Debtor'.

4. Invoices have been detailed by the Adjudicating Authority as mentioned below:-

No.	Invoice No.	Date	Amount
1	SI/M/ 12-13/0169	31.07.2012	44,84,231/-
2	SI/M/ 12-13/0170	31.07.2012	71,31,876/-
3	SI/M/ 12-13/0265	30.09.2012	3,13,580/-
4	SI/M/ 12-13/0347	01.11.2012	49,05,381/-
5	SI/M/ 12-13/0352	04.11.2012	15,07,614/-
6	SI/M/ 12-13/0353	04.11.2012	8,13,897/-
7	SI/M/ 12-13/0354	04.11.2012	4,95,333/-
8	SI/M/ 12-13/0467	11.01.2013	16,10,537/-
9	SI/M/ 12-13/0468	11.01.2013	18,70,473/-
10	SI/M/ 12-13/0469	11.01.2013	16,94,122/-
11	SI/M/ 13-14/0003	10.04.2013	5,40,687/-
12	SI/M/ 13-14/0004	10.04.2013	12,378/-
13	SI/M/ 13-14/0048	07.05.2013	2,55,859/-
14	SI/M/ 13-14/0099	01.06.2013	12,43,486/-
15	SI/M/ 13-14/0100	01.06.2013	54,817/-
16	SI/M/ 13-14/018	26.07.2013	17,30,000/-

			2,86,64,271/-
	Add: Amount transferred to Mitlite Electric Company dated 31.03.2013 & 11.06.2013.		34,60,240/-
	Total		3,21,24,511/-

5. The 'Operational Creditor' claimed that the 'Corporate Debtor' paid a sum of Rs. 2,62,96,033/- and there are outstanding dues of Rs. 58,28,478/- along with interest of Rs. 36,73,378/- @ 18% as on 30.09.2017, totalling to a sum of Rs. 95,01,856/- is still payable.

6. Demand Notice u/s 8(1) was issued by the Respondent – 'Operational Creditor' on 25th October, 2017 which is the reason the Appellant has taken plea that the claim is *'barred by limitation.'*

7. However, from the record, we find that the Appellant – 'Operational Creditor' issued Legal Notice u/s 271 of Companies Act, 2013 within the period of limitation on 20th May, 2015 to the 'Corporate Debtor' to pay outstanding amount of Rs. 58,28,478/- along with 18% interest with clear understanding that if payment is not made winding up proceedings will be filed against 'Corporate Debtor'. The 'Corporate Debtor' replied to the Legal Notice on 26th August, 2015 denying the liability wherein after the Demand Notice u/s 8(1) issued by 'Operational Creditor' on 25th October, 2017.

8. From the aforesaid facts, we find that the claim of the Respondent – 'Financial Creditor' was not barred by limitation.

9. It was next contended that the total amount has been actually paid to the Respondent - 'Operational Creditor'.

10. Learned counsel for the Appellant tried to justify the stand, however, such stand cannot be accepted as the 'Corporate Debtor' had taken plea that the amount payable was barred by limitation.

11. In view of the decision of Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank (2018) 1 SCC 407*", the Hon. Supreme Court will consider the question of application u/s 7 and 9 observed as follows:-

"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 subsection (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.

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned of a dispute or the record of the

pendency of a suit or arbitration proceedings, which is pre-existing- i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. *On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

12. From the aforesaid finding of the Hon'ble Supreme Court, it is clear that the claim even if disputed, if default is more than Rs. 1 lakh, the Appellant will initiate the proceedings against the 'Corporate Debtor'. Submission is made on behalf of the Appellant that the amount disputed by the 'Corporate Debtor' amounts to existence of dispute but such submission cannot be accepted.

It does not come within the meaning of existence of dispute. Dispute raised regarding quantum of amount in the absence of any suit or arbitration or other evidence, it cannot be said to be pre-existing dispute.

We find no merit in this appeal. The Appeal is dismissed. However, although the appeal is dismissed, this order will not come in the way of Appellant to settle the matter with the Respondent and others u/s 12A of the 'I&B' Code.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/gc