

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

Dy.No.529/2017

*Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the
Insolvency & Bankruptcy (Application to Adjudicating) Authority) Rules 2016.*

In the matter of:

Srei Infrastructure Finance Ltd. ... Petitioner

-Versus-

M/s Assam Company India Ltd. ... Respondent

Date of Order:

15th September 2017

Coram:

Hon'ble Mr Justice P K Saikia, Member(J)

ORDER

Mr R.N. Ghosh & Mr R. Sarmah, learned Advocates are present on behalf of the applicant. Mr A. Mitra, learned Sr. Advocate and Mr A. Gaggar, learned Advocates are present on behalf of the respondent.

2. This Tribunal, on 05.09.2017, rendered the following order:

"Mr R.N. Ghosh & Mr R. Sarmah, learned Advocates are present on behalf of the petitioner. Mr A.D. Choudhury, Mr S. Saraugi & Mr D. Choudhury, learned Advocates are present on behalf of the respondent.

2. *Mr A.D. Choudhury, learned Advocate for the respondent has prayed for a small accommodation to make submissions on the point of admissibility of the present proceeding.*

3. *However, such a prayer is opposed by Mr S. Chamaria, learned Advocate for the petitioner stating that in view of the various time frames incorporated in the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as Code of 2016) as well as the language used in the said Code, one would find that the Code does not provide any scope, whatsoever, for the respondents to raise any objection at this stage qua admissibility of the proceeding under Section 7 of the Code.*

4. The learned Advocate for the petitioner further submits that if this Tribunal, on the perusal of the documents, come to the conclusion that the conditions necessary for initiation of a proceeding under Section 7 of the Code of 2016 stand fulfilled then there will be hardly any scope for this Tribunal to give any opportunity to the respondents herein to raise any objection against the admissibility of the proceeding.

5. On going through the details and on hearing the learned Advocates for the parties, I find it necessary to allow a small accommodation to the respondents for placing their version on the matter regarding the admissibility of the present proceeding.

6. List this matter on 11.09.2017."

3. Thereafter, on 11.09.2017, this Tribunal rendered the order which runs as follows:

"Mr R.N. Ghosh and Mr R. Sarmah, learned Advocates are present for the applicant. The respondent is represented by Mr S. Saraugi & Mr D. Choudhury, learned Advocates.

"2. The learned Advocates representing the respondents have prayed for some accommodation stating that the leading counsel for the respondent could not be present before this Tribunal today for presenting arguments for and on behalf of the respondent qua admissibility of the proceeding in hand

"3. Such a prayer is opposed by the learned Advocates for the applicant stating that this Tribunal is required to decide the admissibility or otherwise of this proceeding within a time frame. Further, the scope of resisting this application seeking initiation of corporate insolvency resolution process under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short, Code of 2016) is very limited more particularly, when the applicant has clearly established that the respondents being corporate debtor owed a definite amount of debt to the applicant/Financial Creditor and there was default in repayment of the same in accordance with the schedule of repayment agreed upon earlier by the parties hereto. More so, the application is complete in all respects and IPR has already been nominated against whom no disciplinary proceeding is pending.

"4. On consideration of the submissions advanced by the parties, I find it necessary to accept the prayer seeking adjournment today from the side of the respondent/Corporate Debtor on condition that no further adjournment would be sought for on the next day.

"5. List this matter on 15.09.2017 for admission hearing of the proceeding in hand."

4. Mr R.N. Ghosh, learned Advocate for the applicant submits that all the conditions necessary for initiation of corporate insolvency resolution process under Section 7 against the Corporate Debtor stands fulfilled in the present proceeding and, therefore, this Tribunal is duty bound to admit the same and pass such order as contemplated under Section 7 and other provisions of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as Code of 2016).

5. Mr A. Mitra, learned Advocate for the respondent/Corporate Debtor, on the other hand, submits that the proceeding in hand is required to be rejected for reasons more than one. He, however, contends that in a proceeding of this type, the respondent/Corporate Debtor is required to be given an opportunity to file written objection. In that connection, my attention has been drawn to the decision of Hon'ble Calcutta High Court in the case of **Sree Metaliks Limited & Ors. vs. Union of India & Ors, reported in (2017) 203 CompCas442(Cal)**. Relevant part of the order is reproduced below:

"Section 424 of the Companies Act, 2013 requires the NCLT and NCLAT to adhere to the principles of the natural justice above anything else. It also allows the NCLT and NCLAT the power to regulate their own procedure. Fetters of the Code of Civil Procedure, 1908 does not bind it. However, it is required to apply its principles. Principles of natural justice require an authority to hear the other party. In an application under Section 7 of the Code of 2016, the financial creditor is the applicant while the corporate debtor is the respondent. A proceeding for declaration of insolvency of a company has drastic consequences for a company. Such proceeding may end up in its liquidation. A person cannot be condemned unheard. Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into it. When the NCLT receives an application under Section 7 of the Code of 2016, therefore, it must afford a reasonable opportunity of hearing to the corporate debtor as Section 424 of the Companies Act, 2013 mandates it to ascertain the existence of default as claimed by the financial creditor in the application. The NCLT is, therefore, obliged to afford a reasonable opportunity to the financial debtor to contest such claim of default by filing a written objection or any other written document as the NCLT may direct and provide a reasonable opportunity of hearing to the corporate debtor prior to admitting the petition filed under Section 7 of the Code of 2016. Section 7(4) of the Code of 2016 requires the NCLT to ascertain the default of the corporate debtor. Such ascertainment of default must necessarily involve the consideration of the documentary claim of the financial creditor. This statutory requirement of ascertainment of default brings within its wake the extension of a reasonable opportunity to the corporate debtor to substantiate by document or otherwise, that there does not exist a default as claimed against it. The proceedings before the NCLT are adversarial in nature. Both the sides are, therefore, entitled to a reasonable opportunity of hearing."

6. The learned Advocate for the Corporate Debtor further submits that the figures rendered in different documents attached with the application under Section 7 of Code of 2016 are high contradictory. That apart, the method of computing interest on the principal amount is not only oppressive but profoundly illegal. This is evident from the various documents attached with the application, more particularly, the documents introduced in the form of Annexure-IE.

7. The National Company Law Appellate Tribunal in the case of **M/s Starlog Enterprises Limited Vs. ICICI Bank Limited, Company Appeal (AT) (Insolvency) No.5 of 2017** held that when the figures given in the application and other connected documents are found to be contradictory and mismatched, the Tribunal is required to be careful in admitting the application seeking initiation of corporate insolvency resolution process. Similar view was rendered by NCLT, Principal Bench, New Delhi in the case of **Indian Bank vs. Athena Demwe Power Limited, Company Petition No.55/2017** decided on 12.05.2017. The relevant part of the judgment in **M/s Starlog Enterprises Limited** is reproduced below:


"Lastly, the 'adjudicating authority' has reached a conclusion at paragraph 9 of the impugned order that it is satisfied that the Appellant has committed a default of Rs.27.77 crores, which finding is not only perverse, but also is contrary to the very application of the Financial Creditor itself in complete disregard to the apparent and conspicuous mismatch between the amount demanded by the Financial Creditor from the Appellant-Corporate Debtor in its demand notice dated 6th February 2017 and the amount stated to be in default in the said application."

8. In view of the above, the learned Advocate for the Corporate Debtor has urged this Tribunal to give it an opportunity to file written objection against the application seeking initiation of corporate insolvency resolution process against the Corporate Debtor as required.

9. On hearing the parties having regard to the decision of the Hon'ble Calcutta High Court in **Sree Metaliks Limited** (supra) as well as the decision of NCLAT in **M/s Starlog Enterprises Limited** (supra), I am of the opinion that the Corporate Debtor is required to be given an opportunity to file written objection against the initiation of corporate insolvency resolution process within a period of 7 days from today supplying simultaneously copy thereof to the applicant.

10. On receipt of the reply, the Financial Creditor may, if so advised, file rejoinder thereto supplying simultaneously copy thereof to the Corporate Debtor.

11. List this matter on 13.10.2017.


Member (Judicial)
National Company Law Tribunal,
Guwahati Bench, Guwahati.

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