

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO. 01/I & BP/NCLT/MAH/2016

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

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

Between:

ICICI Bank Limited

.... Applicant

V/s.

M/s. Innoventive Industries Limited

.... Respondent

Applicants' Counsel: Mr. Zal Andhyarujina, Mr. L. Viswanathan, Mr. Mr. Anush Mathkar, Mr. Dhananjay, Mr. Animesh Bisht, Advocates for the Applicant.

Respondents' Counsel: Mr. Ravi Kadam, Sr. Counsel, Mr. Chetan Kapadia, Mr. Rahul Sarda, Mr. Sanjay Asher, Ms. Manik Joshi, Ms. Aditi Shukla, Advocates for the Respondent Company.

ORDER

(Heard & Pronounced on 23.01.2017)

On the mentioning made for clarification on two issues, one – on the another CA filed by the Corporate Debtor and two – for putting the name of agency keeping the information, i.e. CIBIL, this Bench, by invoking inherent powers conferred upon this Bench u/s 420 & 424 of the Companies Act 2013 r/w Rule 11 of NCLT Rules, ordered as follows.

2. The Corporate Debtor Counsel stated in the open court that the other IA 6/2017 filed by the Corporate Debtor is in respect to non-service of notice upon the Debtor, this Bench, believing the statement of the counsel appeared on the corporate debtor behalf, passed orders stating that the argument of non-service of notice would pale into insignificance because this Bench heard on the other CA upon which the corporate debtor vehemently argued. Though it normally does not happen, in rush of work, we inadvertently decided that IA 6/2017 basing on the argument of the

counsel of Corporate Debtor, because that plea would not survive because hearing has already been given to the Corporate Debtor in the earlier application. Delay has also occurred in passing this order owing to the application filed by the Corporate Debtor. Indeed, this Code has nowhere given any explicit opportunity to the Corporate Debtor to exercise the right of making submissions, but this Bench heard and passed orders in the earlier application on 17.1.2017.

3. However, this issue having been brought to the notice of this Bench, it is hereby held that the Corporate Debtor could have raised this plea of no default, which he raised in the above CA 6/2017 along with the issue already raised in the earlier CA already adjudicated. Having not raised the said plea along with other application, this Bench hereby held that this application is not entertainable for two reasons, one – the corporate debtor cannot raise objection, because no audience has been given to the corporate debtor in the Code, two – even if right is assumed as exercisable by the Corporate Debtor, since he has not taken this relief in the earlier application, the corporate debtor is barred from raising such plea in subsequent application.

4. Moreover, Creditor application shall be decided within 14 days from the date of filing creditor petition by ascertaining as to whether petition is in compliance of Section 7 of the Insolvency & Bankruptcy Code, therefore this Bench is under no obligation to hear the Corporate debtor, hence this CA is hereby dismissed even without going into the merits of the application.

5. As to second correction, it is hereby corrected that the default has been taken into consideration on the report given by CIBIL.

Sd/-

B. S.V. PRAKĀSHKUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)