

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Ins) No.271 of 2020**

[Arising out of Order dated 03.01.2020 passed by National Company Law Tribunal, Indore Bench at Ahmedabad in CP (IB) No.370/7/NCLT/AHM/2018]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Mr. Subhash Agrawal  
Ex-Director  
M/s SRK Devbuild Pvt. Ltd.  
13, Gulmohar Colony,  
Saket Nagar, Indore,  
Madhya Pradesh - 452001

...

Appellant

**Versus**

1. M/s. AU Small Finance  
Bank Ltd.  
19-A, Dhuleshwar Garden,  
Ajmer Road,  
Jaipur – 302001  
(Rajasthan)

Petitioner

Respondent No.1

Branch Office at:  
4<sup>th</sup> Floor, B-405,  
Shivalik Corporate Park,  
Above D-Mart,  
Shivranjini Cross Road,  
Ahmedabad,  
Gujarat – 380015

2. M/s. SRK Devbuild Pvt.  
Ltd.  
18/2, Lasudia Mori,  
Dewas Naka,  
A.B. Road,  
Indore,  
Madhya Pradesh – 452010  
Through Interim Resolution  
Professional (IRP)  
Mr. Ravi Kapoor,  
4<sup>th</sup> Floor, Shaival Plaza,  
Gujarat College Road,  
Ellisbridge,  
Ahmedabad – 380006

Respondent/  
Corporate Debtor

Respondent No.2

**For Appellant: Chandra Shekhar Yadav and Ms. Gitanshi Arora, Advocates**

**For Respondents: Shri Samarendra Kumar and Shri Vishnu Jaiswal, Advocates (R-1)  
Shri Ravi Kapoor, Advocate (IRP – R-2)**

**O R D E R**  
**(Virtual Mode)**

**02.03.2021** This Appeal has been filed by the Appellant who is claiming to be suspended Director of the Corporate Debtor – M/s. SRK Devbuild Private Limited. The Respondent No.1 - AU Small Finance Bank Ltd. filed Application – CP (IB) No.370/7/NCLT/AHM/2018 against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC – in short), which Application came to be admitted after hearing parties by the Adjudicating Authority (National Company Law Tribunal, Indore Bench at Ahmedabad) vide Impugned Order dated 3<sup>rd</sup> January, 2020.

2. The Appellant has filed this Appeal and in the Appeal, the Appellant raised grounds that the Application under Section 7 of IBC was not in the form prescribed under IBC; that the Statement of Account was not attached in accordance with the Bankers Book of Evidence Act, 1891; that the Application should have been rejected as defective for want of certification and verification of the averments made; that the Agreement dated 11<sup>th</sup> February, 2015 was not admissible evidence as it was not property stamped.

3. The Adjudicating Authority had dealt with averments raised before it in the Impugned Order as under:-

**“OBSERVATIONS**

19. It is found, that the Petitioner Bank has submitted the documents duly executed by the **Corporate Debtor and Guarantors along with a Certificate under the Banker’s Book of Evidence Act, 1891**, in support of their IB Petition for initiation of C.I.R.P.
- 19.1 The term Loan was sanctioned and released by the Petitioner Bank and the same was availed by the Corporate Debtor, SRK Devbuild Private Limited.
- 19.2 The CD has defaulted in making repayment of the Term Loan to the Petitioner Bank and **the date of default is 31/05/2016**. The Statement of accounts submitted by the applicant Bank **confirm the default** committed by the Corporate Debtor.
- 19.3 **The last payment to the loan was came on 31/05/2017. The OTS proposal was executed on 26/05/2017 but the same was not honoured by the Corporate Debtor.**
- 19.4 **The Petitioner Bank has filed the petition on 02/08/2018 which is within the period of limitation.**
- 19.5 **The charge has been created by the Corporate Debtor with ROC, Gwalior for Rs.4.00 Crores in favour of the Applicant Bank on 09/02/2015 and the said charge creation letter has been issued by the ROC in this regard.**
- 19.6 The present I.B. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt, debt due and defaulted and** proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP).”

4. Today, when the matter has come up for arguments, the learned Counsel for the Appellant has stressed on the issue that the Application under Section 7 of IBC which was filed in August, 2018, copy of which is (Annexure - 1 (colly) page - 41), stated in Part- IV (2) that the amount in default was Rs.33,496,299/- as on 25<sup>th</sup> July, 2018. The entry was linked to the Affidavit, copy of which is at Page - 50 of the Appeal. Referring to the contents of the Affidavit, the learned Counsel for the Appellant submits that the Affidavit did not disclose the facts that the Bank had sold mortgaged property and recovered money. Counsel states that the rate of interest charged by the Bank while making the calculations is also not as per the Agreement. It is also stated that the Corporate Debtor had made payments which did not reflect in the Application, filed under Section 7 of IBC. The stress of the argument of the learned Counsel for the Appellant is that in view of these facts, under Section 7(5)(b) of IBC, the Adjudicating Authority should have treated the Application to be incomplete and thus, the Adjudicating Authority should not have admitted the Application.

5. The Counsel for the Appellant states that the Corporate Debtor had filed objections before the Adjudicating Authority on 19<sup>th</sup> September, 2018 and averments were made that the Application under Section 7 does not reflect all the amounts which the bank has already recovered. The amounts shown as due are not property shown. It is argued that bank had sold mortgaged property and that amount has also not been property reflected.

6. The learned Counsel for the Respondent submits that there are already Judgements passed by the Hon'ble Supreme Court which show that even if

the amount due is disputed, as long as the debt outstanding is more than Rs.1 Lakh (as applicable at time concerned) the Application needs to be admitted.

7. The learned Counsel for the Appellant has argued and referred to Rejoinder and copies of Balance Sheets and in them referred at page of “Notes Forming Part of the Financial Statement as on 31<sup>st</sup> March, 2018” (Page – 51) and pointed out that in the Note No.5 as unsecured debt payable to the Respondent No.1, amount shown by the Corporate Debtor as due was only Rs.1.23 Crores. It is stated that this is the only amount which was due, and calculation of dues in Application under Section 7 was defective.

Thus, financial debt due and in default is of more than Rs.1 Lakh.

8. In the present matter, the Corporate Debtor’s account became NPA on 31<sup>st</sup> May, 2016, is not in dispute. If the Appellant has grievance that the calculations made with regard to the amount outstanding is not correct as per the record, then documents of same can be looked into by the Resolution Professional in CIRP. As far as the admission of the Application is concerned, question required to be considered by Adjudicating Authority, was to see if financial debt was due and if default was of Rupees One Lakh. If the Application is otherwise complete, the Application is required to be admitted.

9. In Judgement in the matter of **“Innoventive Industries Ltd. V. ICICI Bank and Anr.”** reported as (2018) 1 SCC 407, the Hon’ble Supreme Court had in para -27 observed as under:-

**“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.”

10. We had kept this in view and after reproducing para – 28 of the said Judgement in our Judgement in the matter of **“Vineet Khosla Versus Edelweiss Asset Reconstruction Company Ltd. and Others”** 2019 SCC OnLine NCLAT 487, we held in para – 15 as under:-

“From the above, it is clear that at the stage of admission of Application under Section 7, the requirement is to give limited Notice and the considerations would be to see whether or not satisfaction by Adjudicating Authority could be reflected on the basis of Sub-Section (5) of Section 7. If there is a financial debt, which is more than Rs.1 Lakh and there is a default and if the Application is complete, the Application would have to be admitted. The Corporate Debtor is entitled to point out that a default has not occurred in the sense that the ‘debt’ which may include a disputed claim is not due. Corporate Debtor may point out that the debt is not due by showing that it is not payable in law or in fact.”

11. Considering record and Impugned Order, we do not find error on the part of Adjudicating Authority. For such reasons, we do not find any substance in the submissions being made on behalf of the Appellant.

The Appeal is dismissed. No Orders as to costs.

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

[Dr. Alok Srivastava]  
Member (Technical)

*rs/md*