

11th May, 2021

THE SOUTH INDIAN BANK VS GOLD VIEW VYAPAR PRIVATE LIMITED, NCLAT CA (AT) (INSOLVENCY) NO.40 OF 2021

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1. An application under section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) was filed by South Indian Bank (the applicant/financial creditor) before the National Company Law Tribunal (NCLT), Kolkata Bench against Gold View Vyapaar (the respondent/corporate debtor). [CP. (IB) No. 404(KB) of 2020 The South Indian Bank Limited vs. Gold View Vyapaar Private Limited].
2. Section 7 of the I&B Code deals with initiation of Corporate Insolvency Resolution Process (CIRP) by the financial creditor. It provides that when a default has occurred in respect of a financial debt, the financial creditor on its own or on behalf of any other financial creditor, may file an application for initiating CIRP against the corporate debtor.
3. The I&B Code postulates that an insolvency resolution process may be initiated against a corporate debtor by admission of the application for the same and by appointing an Interim Resolution Professional on the satisfaction of the adjudicating authority to the effect that the nature of default calls for such step to be taken.
4. In the insolvency process, requisite steps are taken to revive the accounts of the company and repay off the debts in proportion to the financial position and assets lying with the company. If it is found that such revival is not feasible or practicable then the company goes into liquidation.
5. In this particular case, the application under section 7 was first taken up for hearing by the NCLT on 6th February, 2020 and the applicant were directed to serve notice upon the respondents.
6. Next, the matter was taken up on 12th November, 2020 when the Tribunal granted time to the defendants to file their reply. The matter came up for hearing again on 29th December, 2020 when the time for filing reply was further extended as a last chance on the request of the respondent and the matter was listed for 'final hearing' on 18th February, 2021.
7. Against this order of extension dated 29th December, 2020, the applicants South Indian Bank, filed an appeal [Company Appeal (AT) (Insolvency) No. 40 of 2021 The South Indian Bank Ltd. vs. Gold View Vyapaar Pvt. Ltd.] challenging such order before the appellate authority, National Company Law Appellate Tribunal (NCLAT).
8. On 29th January, 2021, in such appeal, NCLAT made particular observation as to the correctness of the order of NCLT in granting and extending time to the respondent to file its reply and reached to the following conclusions:-
 - 8.1 When the adjudicating authority (NCLT) is statutorily bound to pass an order of admission or rejection of the application within 14 days from the date of filing of such applications contemplated under the provisions of section 7(4) of the I&B Code, then granting untempered time to the respondents to file their reply cannot be the correct approach.
 - 8.2 Section 7(4) envisages a time limit of fourteen days from the receipt of an application under section 7, within which the adjudicating authority shall ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)- being, record of the default, name of the proposed resolution professional and any other information.
 - 8.3 At the pre-admission stage, the only consideration that the adjudicating authority is required to look into is the occurrence and existence of a default on the basis of which the application is either rejected or admitted. The adjudicating authority does not need to go into the merits at this stage and is not a fact-finding forum.
 - 8.4 The decision of the adjudicating authority at pre-admission stage with limited notice to corporate debtor shall be premised on serving the purpose of deriving satisfaction as to existence of a debt, occurrence of a default and completeness of the application.

- 8.5 Section 7(5) of the Code states that on the satisfaction of the adjudicating authority as to the occurrence of the default, completeness of the application and that there is no pending disciplinary proceeding against the proposed resolution professional, the application under section 7 may be admitted. On the other hand, when the default has not occurred, the application is incomplete or disciplinary proceedings are pending against the proposed resolution professional, the application must be rejected.
- 8.6 Further, listing the matter for “final hearing” was a case of use of wrong terminology as final hearing cannot be stipulated at a pre-admission stage.
- 8.7 The NCLT was advised to be aware and awake to the different terms that may be employed at different stages of a CIRP proceeding and directed to pass an order of admission or rejection of the application as warranted without granting any further adjournments for such purpose.
9. The decision of NCLAT in this case can be welcomed, since the I&B Code, does not provide for any form of extension in the time limits stated therein. It is a precise Code on the subject of insolvency and bankruptcy and any form of delay in compliance of its provisions shall not be accepted. The Code has very efficiently provided for the steps to be employed in the process of CIRP at each stage.
10. The words “...*time bound manner for maximisation of value...*” in the Statement of Objects and Reasons of the Code may be read in congruence with the decision of NCLAT to appreciate the interpretation that the luxury of extensions shall not be available in an application filed under the I&B Code unless the premise of an exceptional circumstance can be proved to the satisfaction of the adjudicating authority for seeking such extension.
11. However, at the same time it should be stated that NCLAT took a narrow view of section 7. It should have appreciated that NCLT does need to establish whether the debt has been admitted or not and whether there is a default and for that, amongst others, NCLT will have to ascertain whether any litigation is pending, whether demand is disputed etc. This in itself will require the NCLT to travel in depth and act as a fact-finding forum at this stage. Do note that the fact finding for such purpose will not be in same category of fact finding as is required when a dispute is adjudicated on merits.
12. Thus, even pursuant to the decision of NCLAT on this subject, there exists a grey area since it has yet not been established if the observation of NCLAT was the correct interpretation of the provisions of I&B Code.
13. When the matter came up for hearing before the NCLT on 18th February, 2021, the Tribunal adjourned the hearing since an appeal was pending before the Hon’ble Supreme Court and the parties were awaiting decision in such appeal.
14. The respondent/corporate debtor, Gold View Vyapaar filed an appeal before the Supreme Court under section 62(1) (Appeal to Supreme Court) of the I&B Code challenging the order of the NCLAT since such order was passed *ex parte* to the detriment of the corporate debtor. The appeal [Civil Appeal No. 514 of 2021 Gold View Vyappar Pvt. Ltd vs. The South Indian Bank Ltd], was dismissed by the Division Bench of Hon’ble Justices DY Chandrachud and MR Shah by an order dated 22nd February, 2021. The Court opined that since proceedings are still pending before the NCLT, it was not necessary for the Supreme Court to interfere at this stage and hence it did not entertain the present appeal.
15. The decision of Supreme Court may also be vital in understanding the exclusive authority granted to NCLT in matters or applications filed under the I&B Code.
16. This decision may open the stage to a lot of unanswered questions with respect to provisions of the I&B Code and the role of NCLT and NCLAT as provided therein.

A copy of the judgment is annexed hereto at **page 3 to 4**.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 40 of 2021

In the matter of:

The South Indian Bank Ltd.

....Appellant

Vs.

Gold View Vyapaar Pvt. Ltd.

....Respondent

Present:

Appellant: Mr. Raghav Chadha, Mr. Abhimanyu Chopra, Mr. Parag Maini, Advocates.

Respondent:

ORDER

(Through Virtual Mode)

29.01.2021: The only issue raised in this appeal is that the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, overlooked the mandate of Section 7(4) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) by postponing the order of admission on the application filed by Appellant under Section 7 of the 'I&B Code'.

2. After hearing Mr. Raghav Chadha, Advocate for the Appellant, we find that the application under Section 7 has been filed in December, 2019 and time has been granted to Respondents to file reply umpteen times, three weeks' time granted in terms of the impugned order being as a last chance. This approach cannot be supported as the Adjudicating Authority is statutorily bound to pass an order of admission or rejection on being satisfied in respect of debt, default and completeness of the application within 14 days from the date of filing of such application. It appears that the matter is now fixed for 18th February, 2021 "for final hearing" which appears to be based on a wrong premise as pre-admission hearing with limited notice to the Corporate Debtor is only to derive satisfaction in regard to the existence of debt, occurrence of

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default and completeness of the application. On being satisfied, the Adjudicating Authority is required to pass an order of admission. Therefore, it can safely be stated that no final hearing was postulated at pre-admission stage. The Adjudicating Authority will be well advised to be alive to the phraseology/ terminology to be employed at different stages of the CIRP proceedings and not give impression of a final hearing at the pre-admission stage. Be that as it may, now looking to the fact that the matter is posted for 18th February, 2021, we expect the Adjudicating Authority to address the issue at the pre-admission stage and pass an order of admission or rejection as warranted without granting any adjournment.

The appeal is accordingly disposed off.

Copy of this order be communicated to Adjudicating Authority forthwith.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

AR/g