

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 698 of 2023

In the matter of:

Kakkattu Philip Francis

....Appellant

Vs.

IDBI Bank Ltd. & Anr.

...Respondents

For Appellant

**Mr. Kunal Cheema, Mr. Apoorv Shukla, Mr. Raghav
Deshpande, Advocates.**

For Respondents

**Mr. Ritin Rai, Sr. Advocate with Ms. Shweta
Kapoor, Ms. Kheyali Singhav, Advocates for R1.
Mr. A. Karthik, Ms. Smrithi S. Advocates.
Mr. Ravi Raghunath, Advocate for R2.**

ORDER

20.09.2023: Heard Learned Counsel for the parties.

2. This Appeal has been filed against the order dated 28.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench-IV, by which order the Adjudicating Authority has admitted Section 7 Application filed by the 'IDBI Bank Limited'. 'IDBI Bank Limited' has filed Application under Section 7 claiming principal amount of Rs.3,75,62,720.70/- and interest of Rs.1,12,47,742/-. The Adjudicating Authority issued notices and the Corporate Debtor appeared before the Adjudicating Authority but did not file any Reply. Adjudicating Authority reserved the order on 27.03.2023 and thereafter application was admitted by impugned order dated 28.04.2023.

3. Learned Counsel appearing for the Appellant submits that the Corporate Debtor has been making payment to the Financial Creditors and on the date

order was reserved, the amount of Rs.1,15,00,000/- was already paid which he has mentioned at Page D of the Synopsis. It is submitted that the order impugned records that only Rs.50 Lakhs has been paid which was due to the reason that Corporate Debtor's Counsel could not properly brief the Court and there was technical glitch. He further submits that the Corporate Debtor was a Company which has a good financial position and there are no purposes served for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. It is submitted that under the order of this Tribunal dated 06.07.2023, it was recorded that the Appellant has deposited Rs.4,95,00,000/- to the Bank which amount is more than the principal amount and interest.

4. An Application being IA No.3827 of 2023 was filed for intervention by 'The South Indian Bank Ltd.' where the Bank has submitted that they have filed the claim of Rs.27,52,69,165.96/- which was accepted by the IRP.

5. Counsel for the Resolution Professional submits that the CoC has already been constituted on 24.05.2023 prior to the Appeal came for consideration before this Tribunal and report of the constitution of the CoC was also submitted on 24.05.2023 before the Adjudicating Authority.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. Even though the Appellant has paid the IDBI Bank Ltd. the amount of Rs.4,95,00,000/-, the CoC having been constituted and there being claim of other Financial Creditors the approval of CoC of 90% vote shares is required

for closing the CIRP against the Corporate Debtor, it is open for the Appellant to also settle with the claim of other Financial Creditor i.e. 'The South Indian Bank Ltd.' and make an appropriate application under Section 12A.

8. Insofar as submission of the Appellant that Appellant was not fully heard by the Adjudicating Authority and there was technical glitch, suffice it to say that the Adjudicating Authority recorded in paragraph 6 that it has heard the arguments of the Learned Counsel for Financial Creditor and the Corporate Debtor. Furthermore, we have noticed that the Reply was not filed by the Corporate Debtor which was noted in paragraph 5. Even if there was any technical glitch as contended by the Counsel for the Appellant in the oral submission, it was open for the Appellant to immediately filed an Application before the Adjudicating Authority bringing the said fact and praying for such order as would have been advised.

9. Learned Counsel for the Appellant relied on the judgment of the Hon'ble Supreme Court in ***"Vidarbha Industries Power Limited vs. Axis Bank Limited – (2022) 8 SCC 352"*** and submits that in the facts of the present case when the Corporate Debtor was making part payment, it was not case for directing initiation of the CIRP. Judgment of ***"Vidarbha Industries Power Limited"*** does not help the Appellant in the present case since the reason for which the Hon'ble Supreme Court has interfered with the order of the Adjudicating Authority has been clearly noted in the order itself and there were distinguishing fact on which the Hon'ble Supreme Court took the view that it was not necessary to initiate the CIRP against the Corporate Debtor.

10. Learned Counsel for the IDBI Bank Ltd. submits that the Appellant's claim is not only Rs.4,95,00,000/- as was deposited. We are of the view that there is no need to express any opinion on the said contention of the parties and it is for the Adjudicating Authority to look into.

11. In view of the aforesaid reasons, we do not find any ground to interfere with the impugned order. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Anjali/nn