

## Ashok Oswal vs Uco Bank & Anr on 15 May, 2019

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI  
Company Appeal (AT) (Insolvency) No. 763 of 2018

[Arising out of Order dated 30th October, 2018 passed by National Company Law Tribunal, Chandigarh Bench Chandigarh, in CP (IB) No. 136/Chd/Pb/2018]

IN THE MATTER OF:

Mr. Ashok Oswal  
148/1, Oswal House, Maharani Jhansi Road,  
Civil Lines, Ludhiyana - 141001.

...Appellant

Vs

1. UCO Bank  
Head office: No. 10, BT Maharaj Sarani,  
Kolkata - 700 001.  
Branch Office: Civil Lines Bharat Nagar Chowk,  
Ludhiyana.

2. Mr. Hemanshu Jetley  
Resolution Professional,  
Oswal Spinning and Weaving Mills Limited,  
The Corporate Debtor  
SCO 131, Second Floor, Mansadevi Complex,  
Sector 5, Panchkula, Haryana.

....Respondents

Present:

For Appellant: Mr. Vipul Ganda and Ms. Shreya Jain, Advocates.  
Mr. Ashok Oswal, Appellant in person.

For Respondents:

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J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

UCO Bank (Financial Creditor) filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') against 'Oswal Spinning and Weaving Mills Ltd.' (Corporate Debtor) which having admitted on 30th October, 2018 by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, the present appeal has been preferred by 'Mr. Ashok Oswal', Shareholder of the Corporate Debtor.

2. The case of the Appellant is that the Corporate Debtor to meet its working capital requirement, availed the Export Packing Credit Facility and Cash Credit Facility from UCO Bank, Civil Lines, Ludhiana. The Bank granted Foreign Bill Negotiation Facility to the Corporate Debtor and as per the Export Packing Credit Facility, the Corporate Debtor was to be repaid by discounting of the foreign export bills of the Corporate Debtor with the Bank, backed by letter of credits issued by reputed international banks, so as to reduce the risk involved in the said transaction.

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3. The sanctioned account of Cash Credit Facility was Rs.2,00,00,000/- and Export Packing Credit Facility was Rs.13,45,00,000/-. From the aforesaid account a Term Loan of Rs.2,11,643/- was also taken.

4. The grievance of the Appellant is that the Corporate Debtor was surprised and shocked to receive notice on 16th May, 2016 under Section 13(2) of the SARFAESI Act, 2002 stating that the account of the Corporate Debtor has become NPA on 30th September, 2015. It is stated that the account of the Corporate Debtor was regular till July, 2015, except a minor delay in payment of the overdue interest in the month of August, 2015, which was well within 90 days as per master circular. It is also alleged that UCO Bank filed an application under Section 19(1) of the "Recovery of Debts Due to Banks and Financial Institutions Act, 1993" before the Debt Recovery Tribunal, Chandigarh for recovery of Rs.19,11,80,419.73/- which was inclusive of the Export Packing Credit Facility account and Cash Credit Facility account. It is further stated that the Corporate Debtor also filed counter claim of Rs.75,27,00,000/- against the UCO Bank for the losses incurred by the Corporate Debtor due to the unprofessional and arbitrary attitude of the Bank. However, it is accepted that the counter claim filed by the Corporate Debtor has been rejected.

5. The UCO Bank subsequently filed application under Section 7 of the I&B Code. According to the Appellant, the application was incomplete even after the Bank was given numerous opportunities to correct it. Learned counsel for the Company Appeal (AT) (Insolvency) No. 763 of 2018 Appellant submitted that the date of default was wrongly indicated as December, 2015 and also shown wrong date of NPA. The IBC Petition with details of charge was not placed on record.

6. Learned counsel for the Appellant submitted that the Adjudicating Authority failed to notice that the account of the Corporate Debtor was wrongly declared as NPA and the petition under Section 7

was liable to be dismissed. The Adjudicating Authority also failed to consider that there is disputed question relating to amount as shown in the Section 7 petition. It was submitted that in absence of definite amount and date of default, the petition under Section 7 was not maintainable. Further according to learned counsel for the Appellant, after initiating multiple recovery proceeding against the Corporate Debtor during last three years, the application under Section 7 was not maintainable and provision of Sub-Section (3) of Section 7 was not followed.

7. In "Innoventive Industries Ltd. Vs. ICICI Bank and Ors. reported in (2018)1 SCC 407", the Hon'ble Supreme Court while dealt with Section 7 of the I&B Code observed and held as follows:-

"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 Company Appeal (AT) (Insolvency) No. 763 of 2018 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.

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28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered

post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain Company Appeal (AT) (Insolvency) No. 763 of 2018 the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub- section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

8. In the present case, as it is not disputed that there is a debt which is more than Rs.1 Lakh and the Corporate Debtor failed to pay the debt, we hold that the application under Section 7 was maintainable.

9. On 7th December, 2018, we observed that prima facie there is no merit in the appeal but the counsel for the Appellant informed that the Appellant intends to settle the matter therefore the matter was adjourned time to time. Even after six months as the matter was not settled, we heard the case on merit. Mr. Vipul Ganda, learned counsel for the Appellant initially argued the case and subsequently submitted that Mr. Ashok Oswal is interested to argue the case on Company Appeal (AT) (Insolvency) No. 763 of 2018 merit. In spite of the fact that the Appellant - Mr. Ashok Oswal has appointed the counsel, we allowed the Appellant to address on merit of the appeal. Mr. Ashok Oswal wanted to read written argument instead of arguing the case on merit. Nothing specific in his submission transpired. However, we allowed him to file written submissions by 8th May, 2019. The same have been filed on 8th May, 2019 vide Diary No. 11961. The written submission are repetition of the case put up by the Appellant which we have already referred in this Judgment earlier. For reasons already discussed, we do not find substance in the written submissions filed.

10. In the facts and circumstances and in absence of any merit, the appeal is dismissed. No costs.

[Justice S. J. Mukhopadhaya] Chairperson [Justice A. I. S. Cheema] Member (Judicial) NEW DELHI 15th May, 2019 AM Company Appeal (AT) (Insolvency) No. 763 of 2018