NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1059 of 2022
& I.A. No. 3090 of 2022

[Arising out of Order dated 08.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P.(IB) No.309/KB/2020]

In the matter of:

Ravi Auto Ltd. **...Appellant**

Vs.

Surana Mercantiles Pvt. Ltd. **...Respondent**

For Appellant: **Mr. Ashok Kumar Parija., Sr. Advocate with Mr. Ayan Rai, Mr. Amritesh Mohanty, Advocates.**

For Respondent: **Mr. Ashish Choudhury, Mr. Abhishek Arora, Advocates.**

JUDGMENT
(27th November, 2024)

Ashok Bhushan, J.

This Appeal by a Financial Creditor has been filed challenging the order dated 08.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench-I, Kolkata dismissing Section 7 application CP(IB) No.309/KB/2020 filed by the Appellant.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Financial Creditor disbursed an amount of Rs.1,00,00,000/- to the Corporate Debtor on 01.11.2016. A Promissory Note was also executed by the Corporate Debtor on 01.11.2016. The disbursement of Rs.1,00,00,000/- was also reflected in the ledger entry of the Financial Creditor. Corporate Debtor paid interest on the Inter Corporate Deposit (ICD) on quarterly basis till 31.03.2018. No payments were made towards interest w.e.f. 01.04.2018. On 01.04.2018, Financial Creditor issued confirmation of the accounts to the corporate debtor for the period 01.04.2017 to 31.03.2018. The confirmation was duly signed by the corporate debtor acknowledging an amount of Rs.1,10,79,999/-. Financial Creditor filed Section 7 application on 16.01.2020 claiming debt due totalling to Rs.1,27,74,686/-. Rs.1,00,00,000/- as principal amount and Rs.27,74,686/- as interest. The Corporate Debtor filed reply to the Section 7 application to which rejoinder was also filed by the financial creditor. Adjudicating Authority vide its order dated 08.06.2022 rejected the Section 7 application. Adjudicating Authority held that there is no written agreement between the parties. It held that the Promissory Note is not in proper format and not on a stamp paper and not properly signed. It held that the confirmation of the accounts issued by the corporate debtor fails to establish that the amount due from the corporate debtor to the financial creditor is on account of the ICD. It was further held that there is no document to suggest the date of default. It is not possible for the Adjudicating Authority to ascertain whether there was a default in payment of the due amount. Aggrieved by the order rejecting Section 7 application, this Appeal has been filed.

3. We have heard Shri Ashok Kumar Parija, Learned Senior Counsel appearing for the Appellant. We have also heard Counsel appearing for the corporate debtor.

4. Learned Senior Counsel for the Appellant challenging the impugned order contends that all the reasons given by the Adjudicating Authority are erroneous and were not sufficient ground to reject Section 7 application. Counsel for the Appellant submits that the mere fact that there is no written agreement between the parties is not decisive when the financial transaction was reflected from the materials which were filed by the financial creditor. It is submitted that the disbursement of the amount is not even disputed. The payment of interest was made by the corporate debtor till 31.03.2018 which is also reflected in the ledger. The account confirmation was also signed by the corporate debtor which is also undisputed fact. The fact that interest was paid by the corporate debtor was also not denied. Non-stamping of the promissory note has no relevance since financial transaction is reflected from other materials on record. It is submitted that the corporate debtor by accepting the confirmation of accounts dated 01.04.2018 has acknowledged that the debt is due right from 01.04.2018 and the Adjudicating Authority erred in rejecting the application on the ground that no demand has put on record.

5. Counsel for the Corporate Debtor refuting the submissions of the Counsel for the Appellant submits that even the promissory note relied by the financial creditor refers to payment on demand, no proof of demand has

been filed by the financial creditor and application under Section 7 has rightly been rejected. It is submitted that Part IV of Section 7 application did not mention the date of default. When date of default is not mentioned in Part IV, application was liable to be rejected. There was no written agreement between the parties to prove that there is a financial debt. The mere fact that Rs.1,00,00,000/- was disbursed does not itself prove that there was any financial transaction.

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

7. Before we proceed to consider the respective submissions of the parties, it is useful to extract pleadings of financial creditor in Part-IV. Part-IV of Section 7 application is as follows:-

"Part-IV

PARTICULARS OF FINANCIAL DEBT		
1.	***TOTAL AMOUNT OF DEBT GRANTED AND DATE OF DISBURSEMENT***	*The total amount of debt due and payable by the corporate debtor to the financial creditor is Rs. 1,27,13,686/- (Rs. 1,00,00,000/- being the principal sum and Rs. 27,74,686/- being the interest due and payable as on 10 January 2020).* *It is stated that pursuant to negotiations, the financial creditor extended a sum of Rs. 1,00,00,000/- as Inter-Corporate Deposit (ICD) to the corporate debtor Copy of the statement of accounts of the financial creditor evidencing disbursement of the aforesaid sum to the corporate debtor is annexed*

		hereto and marked as Annexure 6. A Demand Promissory Note 1 November 2016 was also issued by the corporate debtor to the financial creditor confirming receipt of the aforesaid amount. A copy of the aforesaid demand promissory note is annexed hereto and marked as Annexure 7. It is stated that it was agreed by and between the parties that interest would be payable on a four monthly basis by the corporate debtor to the financial creditor.
2.	***AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH OCCURRED THE DEFAULT***	*The total amount of debt due and payable by the corporate debtor to the financial creditor is Rs. 1,27,74,686/- (Rs. 1,00,00,000/- being the principal sum and Rs. 27,74,686/- being the interest due and payable as on 10 January 2020). A copy of the ledger of the corporate debtor maintained by the financial creditor is annexed hereto and marked as Annexure 8.* *It is stated that from the aforesaid ledger, it will be evident that the corporate debtor has serviced interest till the period ending 31 March 2018. Thereafter, despite repeated reminders from the financial creditor, the corporate debtor has failed and neglected to service the same. A chart showing the details of the outstanding interest is annexed hereto and marked as Annexure 9.* *It is also pertinent to mention that the corporate debtor issued a balance confirmation for the financial year 2017-18 to the financial creditor in respect of the sums owed by it to the latter. A copy of the aforesaid balance confirmation is annexed hereto and marked as Annexure 10.*

		It is stated that thereafter, despite repeated reminders, the corporate debtor has failed neglected to make any payment to the financial creditor either on account of principal or interest. *Hence, this application.*

8. From the above, it is clear that it was pleaded in Section 7 application that the corporate debtor has serviced interest till the period ending 31.03.2018 and balance confirmation was also issued. Details of outstanding interest were also annexed as Annexure A-9 to the Section 7 application. Ledger of the corporate debtor maintained by the financial creditor reflecting the payment of interest was also annexed and further letter dated 01.04.2018 on confirmation of accounts has also been pleaded.

9. The first reason given by the Adjudicating Authority for rejecting the application is that there is no written agreement between the parties. The issue that it is not necessary for financial debt to be proved by a written agreement is no more *res integra*. Counsel for the Appellant has relied on the judgment of this Tribunal in ***"Agarwal Polysacks Limited vs. K.K. Agro Foods and Storage Limited- 2023 SCC OnLine NCLAT 624"*** where this Tribunal has held that if the transaction can be proved from other materials on record, requirement of written financial contract is not a pre-condition for proving debt. Following was laid down in paragraph 31:-

> *"**31.** The Adjudicating Authority, however, took a view that there should be financial contract between the parties which elucidate the rate of interest and*

date of repayment. The Adjudicating Authority took a view that there is no written agreement to establish the nature of transaction between the parties, hence, Appellant failed to prove the debt. We have already held that requirement of written financial contract is not a pre-condition for proving debt. When Adjudicating Authority itself given finding in Para 5-6 the disbursement was with interest and repayment was on demand, two essential conditions of financial debt were present with regard to time value of money. When the financial statement indicate amount with interest since the loan of Rs. 75,00,000 increased in the FY 2017-18 and amount due was shown as Rs. 79,70,250, which clearly was after adding the interest, disbursement has to be held for time value of money. We, thus, are satisfied that all preconditions for establishing financial debt are proved by the Financial Creditor and the order of the Adjudicating Authority rejecting Section 7 application is not sustainable."

10. The submission which has been pressed by the Counsel for the Respondent is that there is no date of default mentioned in Part-IV. It is true that Part-IV does not specifically mention any date of default in Col.2 Part IV. However, Part-IV clearly pleads that the interest has been serviced till 31.03.2018 and thereafter interest is outstanding. Annexure A-9 was filed to the Section 7 application which refers to outstanding amount w.e.f. 01.04.2018. It is useful to extract Annexure- A9 which is part of Section 7 application which is as follows:-

"RAVI AUTO LIMITED
103, PARK STREET, 6TH FLOOR, KOLKATA- 700016

Surana Mercantiles Private Limited
15, Shakespeare Sarani,
Room No.505
Kolkata- 700017

1,03,58,027.00 4,15,456.00	Balance upto 31.08.2018 01.04.2018 to 31.07.2018	-122 days @12%
1,07,78,483.00		
4,32,120.00	01.08.2018 to 30.11.2018	122 days @ 12%
1,12,05,603.00		
4,15,769.00	01.12.2018 to 31.03.2019	121 days @ 12% 365
1,16,51,372.00		
4,67,332.00	01.04.2019 to 31.07.2019	-122 days @12%
1,21,18,704.00		
4,86,076.00	01.08.2019 to 30.11.2019	-122 days @12%
1,26,04,780.00		
1,69,906.00	01.12.2019 to 10.01.2020	41 days @ 12% 285
1,27,74,686.00		

11. Further, the balance confirmation letter dated 01.04.2018 which is also part of Section 7 application clearly mentioned that balance as on 01.04.2018 is Rs.1,10,79,999/-. Balance confirmation was signed by the corporate debtor and in the reply which was filed by the corporate debtor before the Adjudicating Authority, balance confirmation was not even denied. Further the payment of interest till 31.03.2018 was pleaded by the financial creditor which was reflected by ledgers filed along with Section 7 application. It is relevant to notice that in the reply filed by the corporate debtor the payment of interest during certain period has not been denied. It is useful to extract following statement from reply of the corporate debtor:-

> *"(l) There is no agreement and/or written terms and conditions filed with the Form No-1 and as such, the applicant cannot be treated to be a Financial Creditor' as mere grant of ICD does not amount to 'Financial Debt' within the meaning of Section 5(8) of the said Code. There was no term of payment of interest provided therein and the amount cannot be treated to be investment by the applicant in consideration for the time value of money. Mere fact that the respondent paid interest during certain period cannot be the ground to hold that the alleged 'debt' comes within the meaning of Financial Debt' to treat the applicant as Financial Creditor'."*

12. From the materials brought on record, it is clear that the interest was paid by the corporate debtor till 31.03.2018 which was reflected in the ledger and payment of interest was not denied. Disbursement of Rs.1,00,00,000/- on 01.11.2016 is admitted fact and not denied. Payment of interest is also admitted fact, hence, it is clearly proved that the disbursement was for time value of money since the interest was admittedly paid by the corporate debtor till 31.03.2018.

13. The submission of the Counsel for the Corporate Debtor, as noted above, that no date of default was mentioned also need to be considered. We have already noticed that in Annexure A-9 filed to the Section 7 application, details of outstanding were mentioned and outstanding was mentioned from 01.04.2018. Balance confirmation also accepted the outstanding of Rs.1,10,79,999/- w.e.f. 01.04.2018. Thus, the date of default is clearly reflected from materials brought on the record along with Section 7

application and the mere fact that specifically there was no mention of date of default in Part IV Col.2 is not fatal. When Section 7 application, pleadings and materials brought on the record clearly point out the date of default which in the present case is 01.04.2018, non-mention of specific date of default in Part-IV is not fatal.

14. Counsel for the Appellant has relied on judgment of this Tribunal in ***"Manmohan Singh Jain vs. State Bank of India and Another - 2021 SCC OnLine NCLAT 5983"*** where this Tribunal has laid down following in paragraphs 47 and 52:-

> *"**47)** This 'Tribunal' deal with the issues as raised by the Learned Counsel for the Appellant, the facts of the present case and law applicable to it. In the present Appeal, though the first date of NPA is with respect to Axis Bank i.e. 10.02.2017. However, the RBI circulars/Directives provides filing of independent application by the Financial Creditor i.e. the SBI before the Adjudicating Authority (NCLT) under Section 7 of the IBC. Accordingly, the Applicant the 1st Respondent herein filed application under Section 7 of the IBC for initiating the CIRP against the Corporate Debtor independently taking into the date of NPA/default and the amount of debt and default. There is no dispute with regard to the existence of debt and default committed by the Corporate Debtor. However, there is only an objection raised with respect to omission to mention the date of default in Part IV of Form 1 filed before the Adjudicating Authority. It is evident from the records that the date of NPA of the SBI is 27.11.2018*

and the application filed by the Financial Creditor on 19.12.2019 even if the 90 days period prior to NPA is taken into consideration for the purpose of deciding default as per the Judgment of the Hon'ble Supreme Court in Re Laxmi Pat Surana, the application is within the period of limitation. Further, this 'Tribunal' hold that omission to mention date of default in Col. 2 Part IV in Form 1 is not fatal to the application. As we are of the view that as per Col. 8 of Part V in Form 1 regarding particulars of Financial Debt documents, records and evidence of default to be attached, the Financial Creditor has shown sufficient documentary evidence to establish the date of NPA i.e. 27.11.2018 and the Adjudicating Authority has taken note of the same and admitted the application. This 'Tribunal' do not find any illegality in admitting the application.

52) *Further the Learned Counsel for the Appellant relied upon the Judgment of the Hon'ble Supreme Court in Surendra Trading Co. v. Juggilalkamlapat Jute Mills Co., (2017) 85 taxmann com 372 SC to show that the timelines under Section 7(5) of the Insolvency and Bankruptcy Code are not mandatory however the defect has still to be removed. As stated above, the Respondent/Financial Creditor had stated the date of default in the pleadings and in other documents which the Corporate Debtor has received and acknowledged, therefore as held supra the non-mentioning of the date of default in Col. IV is not fatal to the application and on the sole ground, the application cannot be rejected mere taking a technical impediment as held by the Hon'ble Supreme Court that 'it is only a directory'."*

15. The above judgment of this Tribunal fully supports the submissions of the Counsel for the Appellant that non-mention of the date of default in Part-IV is not fatal when other materials and pleadings in Part-IV clearly points out the date of default.

16. The next reason given by the Adjudicating Authority for rejecting Section 7 application was that the promissory note was not in proper format and stamped. Promissory note was only an additional material filed by the financial creditor to prove that the amount was disbursed to the corporate debtor. When disbursement of the amount is not even disputed, the factum that the promissory note is not duly stamped becomes insignificant. Counsel for the Appellant has relied on the judgment of this Tribunal in ***"Hiren Meghji Bharani vs. Shankheshwar Properties Pvt. Ltd. & Anr.- Company Appeal (AT) (Insolvency) No.446 of 2023"*** where this Tribunal in paragraph 27 laid down following:-

> *"27. In the above-mentioned circumstances, non-stamping of document does not render the corporate insolvency resolution process ("CIRP") application filed to be non-maintainable when there exists other material on record to prove existence of default in the payment of debt. We do not find any error in the order of the Adjudicating Authority admitting Section 7 proceedings of the IBC against the CD/ M/s Shankheshwar Properties Pvt. Ltd. (R-1). We thus, are of the view that there is no merit in this appeal and the appeal deserves to be dismissed."*

17. The promissory note is not the only document relied by the financial creditor to support his claim. Promissory note was filed to prove the disbursement. The corporate debtor does not deny that the promissory note was issued. When there are other materials on record to prove the disbursement and default, non-stamping of promissory note is inconsequential and could not be a reason to reject Section 7 application.

18. From the above discussions, we are satisfied that the financial creditor has been able to satisfactorily prove that there was financial transaction between the parties and financial debt is due to be paid by the corporate debtor in which default was committed. Sufficient ground was made out to admit Section 7 application. Adjudicating Authority committed error in rejecting Section 7 application vide order dated 08.06.2022.

19. In view of the foregoing reasons and conclusions, we dispose of the Appeal in following manner:-

(i) The order dated 08.06.2022 passed by the Adjudicating Authority rejecting Section 7 application is set aside.

(ii) The Adjudicating Authority may pass an order admitting Section 7 application within a period of one month from the date copy of this order is produced before the Adjudicating Authority.

(iii) During the aforesaid period of one month, it shall be open for the corporate debtor to enter into settlement, if any, with the financial creditor for discharge of its debt. In event of any settlement, the same may be brought before the Adjudicating Authority who may consider and pass an appropriate order in accordance with law.

20. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi
Anjali