

Case Snippets

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**Allahabad Bank Vs. Poonam Resorts Limited, Company Appeal (AT)
(Insolvency) No. 1303 of 2019, dated 22nd May, 2020 (NCLAT)**

The Adjudicating Authority cannot direct a forensic audit and engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the 'I&B Code'.

**Section 75 read with Section 7 of Insolvency and Bankruptcy Code, 2016 -
Punishment for false information furnished in application**

The applications filed under Section 7 by the Appellant 'Financial Creditor' against Respondents- 'Corporate Debtors' in the two appeals praying for initiation of 'Corporate Insolvency Resolution Process' on the ground that the 'Corporate Debtors' had committed default qua the financial debt that was payable in law.

The applications under Section 7 of the 'I&B Code' filed by the 'Financial Creditor' on 5th September, 2018 and the matter was pending consideration before the Adjudicating Authority since 18th September, 2019.

Objections were raised on behalf the 'Corporate Debtors' that the 'Corporate Insolvency Resolution Process' had been initiated fraudulently and with a malicious intent to drag a solvent corporate who was willing to pay amounts that were actually due and payable legally.

On an applications under Section 75 of the 'I&B Code' by the Corporate Debtor, the Adjudicating Authority, being of the view that during the entire loan process due diligence was not carried out, appointed a Forensic Auditor to examine allegations raised by the 'Corporate Debtor' and submit an Independent Report delineating some factual aspects bearing upon utilisation of the credit facility extended by the 'Financial Creditor' to 'Corporate Debtor'.

In the present case question before Hon'ble NCLAT was that whether the Adjudicating Authority was justified in overlooking the time frame prescribed under Section 7 of the 'I&B Code' and embarking upon an enquiry to determine whether the applications filed under Section 7 contained false information, when the matters were at the very threshold stage?



NCLAT held that it is apt to refer to the observations of the Hon'ble Apex Court in the matter of "Innoventive Industries Limited v. ICICI Bank and Anr.- (2018) 1 SCC 407" where it was specifically mentioned **that the speed, within which the adjudicating authority is to ascertain 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.**

The dictum of law propounded by the Hon'ble Apex Court is loud and clear. The Adjudicating Authority cannot travel beyond the letter of law and the dictum of the Hon'ble Apex Court. The satisfaction in regard to occurrence of default has to be drawn by the Adjudicating Authority either from the records of the information utility or other evidence provided by the 'Financial Creditor'. The Adjudicating Authority cannot direct a forensic audit and engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the 'I&B Code'. If the 'Financial Creditor' fails to provide evidence as required, the Adjudicating Authority shall be at liberty to take an appropriate decision. If the application is incomplete, it can return the same to the 'Financial Creditor' for rectifying the defect. This has to be done within 7 days of the receipt of notice from the Adjudicating Authority. However, the 'I&B Code' does not envisage a pre-admission enquiry in regard to proof of default by directing a forensic audit of the accounts of the 'Financial Creditor', 'Corporate Debtor' or any 'financial institution'. Viewed thus, the impugned order cannot be supported. Application under Section 75 of the 'I&B Code' on behalf of the 'Corporate Debtors' cannot be permitted to frustrate the provisions of the 'I&B Code' when the matter is at the stage of admission. Section 75 is a penal provision which postulates an enquiry and recording of finding in respect of culpability of the Applicant regarding commission of an offence. The same cannot be allowed to thwart the initiation of 'Corporate Insolvency Resolution Process' unless in a given case forgery or falsification of documents is patent and prima facie established.

In view of the foregoing discussion, we find that the impugned orders suffer from grave legal infirmity and cannot be sustained. The impugned orders in both appeals are set aside and the appeals are allowed. The Adjudicating Authority is directed to address the issue regarding admission of the applications filed by the 'Financial Creditors' in the light of aforesaid observations without further loss of time. However, before proceeding further, the Adjudicating Authority may provide an opportunity to parties to settle the claims.

