The pendency of a Section 34 challenge to an arbitral award does not defeat a Section 7 IBC application where the insolvency application is independently founded on an earlier payment default, and that the arbitral award, in any event, gives a fresh period of limitation for initiating CIRP if filed within three years thereof

The **New Delhi Principal Bench of the National Company Law Appellate Tribunal (NCLAT)** in the case of **Bindu Kapoor vs Sapan Mohan Garg [Company Appeal (AT) (Insolvency) No. 2040 of 2025] dated May 29, 2026**, has held that where a financial creditor establishes the existence of financial debt and a continuing default, a Section 7 application is maintainable even if the creditor has also obtained an arbitral award and pursued execution proceedings, because those remedies are not mutually exclusive. In the present case, the default was held to have arisen independently upon non-payment pursuant to the valid loan recall notices, and was not dependent solely on the arbitral award.

The Tribunal further held that a contractually defined "material adverse effect" clause can validly support recall of the loan where the lender forms the opinion that circumstances affecting the guarantors impair the obligors' ability to perform their obligations, particularly where guarantors are expressly included within the definition of "Obligor(s)." Consequently, non-payment within the recall period constituted default for the purpose of Section 7.

It was also held that the pendency of a Section 34 challenge to an arbitral award does not defeat a Section 7 application where the insolvency application is independently founded on an earlier payment default, and that the arbitral award, in any event, gives a fresh period of limitation for initiating CIRP if filed within three years thereof.

The Tribunal observed that the loan recall notices were not infirm and were issued in accordance with the contractual framework. The Tribunal noted that the loan agreements defined "Material Adverse Effect" broadly and included within "Obligor(s)" not only the borrower but also guarantors and other security providers. Since Rana Kapoor was an admitted guarantor, and criminal investigation and arrest had occurred, the lender was entitled, under Clause 12.1.8 and the consequences of default provision in Clause 12.2, to form the opinion that a material adverse effect had arisen and to recall the loans.

The Tribunal further observed that the Section 7 application against Bliss Abode was not founded only on the arbitral award. It specifically relied on the default that first occurred upon failure to pay the recalled dues by March 14, 2020, and pleaded that such default continued thereafter. Therefore, the appellant's reliance on Regulation 2A and the contention that a non-final arbitral award could not be the basis of the insolvency application did not assist the appellant, because the award was not the sole basis of the claimed default.

On the argument that Section 7 was being used as an execution mechanism, the Tribunal held that the facts did not disclose abuse of process. It observed that the inquiry under Section 7 is confined to the existence of financial debt and default, and once those are established, admission follows. It also reiterated that there is no general discretionary power to refuse admission once debt and default are proved.

The Tribunal also rejected the limitation objection, and held that in addition to the continuing default after the recall notice, the arbitral award gave a fresh cause of action, and since the Section 7 application had been filed within three years thereafter, it was within limitation. The Tribunal finally concluded that for more than six years no payment had been made by either corporate debtor despite the recalled outstanding debt, and that debt and default stood proved.