

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 702 of 2019

IN THE MATTER OF:

Mr. Dinesh Goyal

...Appellant

Vs.

DCB Bank Ltd.

...Respondent

Present: For Appellant: - Mr. Ajatshatru S. Mina and Ms. Aishwarya, Advocates.

O R D E R

10.07.2019— ‘DCB Bank Limited’- (‘Financial Creditor’) filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) against ‘M/s. Fort Biotech Private Limited’- (‘Corporate Debtor’) which was admitted on 8th March, 2019.

2. Though no petition on behalf of the ‘Corporate Debtor’- (‘M/s. Fort Biotech Private Limited’) was maintainable through the suspended Board of Directors having taken over by the ‘Interim Resolution Professional’ on behalf of the ‘Corporate Debtor’, an application was filed for review or recall of the order dated 8th March, 2019 on the ground that the ‘Corporate Debtor’ had not received the notice as there was a dispute between the landlord of premises with the ‘Corporate Debtor’.

Contd/-.....

3. The Adjudicating Authority (National Company Law Tribunal), Jaipur Bench (Rajasthan) by impugned order dated 7th June, 2019 held that it has no power of review nor it can recall the order under Rule 11 of the National Company Law Tribunal Rules, 2016.

4. Section 420 (2) of the Companies Act, 2013, reads as follows:

“420. Orders of Tribunal.—.....(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.”

5. In the present case, as there is no mistake apparent from the record and in absence of any typographical error, it was not open to the Adjudicating Authority to take any recourse of sub-section (2) of Section 420 of the Companies Act, 2013.

6. Learned counsel appearing on behalf of the Appellant referred to Section 424 of the Companies Act, 2013 which mandates the National Company Law Tribunal to pass orders following principles of natural justice.

7. This Appellate Tribunal in ***“M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr.— Company Appeal (AT) (Insolvency) No.s. 1 & 2 of 2017”*** has already held that before admission of an application under Sections 7, 9 or 10, limited notice should be given to the ‘Corporate Debtor’. Therefore, it is needless to say that the Adjudicating Authority was required to issue limited notice to the ‘Corporate Debtor’ before passing any order under Section 7 of the ‘I&B Code’.

8. However, it is not in dispute that the Adjudicating Authority issued notice on the ‘Corporate Debtor’ which was served. In spite of service of notice, the ‘Corporate Debtor’ had not appeared and thereafter, the Adjudicating Authority had no option but to proceed on merit and pass order which was passed on 8th March, 2019.

9. The only plea taken by the Appellant is that the Appellant has not received any notice as there was a dispute between the landlord with the ‘Corporate Debtor’ with regard to office of the ‘Corporate Debtor’, but such ground cannot be accepted for recall of the order dated 8th March, 2019.

10. We asked learned counsel for the Appellant to address this Appellate Tribunal as to what stand the 'Corporate Debtor' could have taken before the Adjudicating Authority prior to admission of the application under Section 7 of the 'I&B Code'. However, pursuant to the said question it is accepted that there is debt and default and the 'Corporate Debtor' is not in a position to settle the claim. In that view of the matter, any opportunity to the 'Corporate Debtor' will be a futile exercise and we are not inclined to interfere with the impugned order dated 7th June, 2019.

11. However, taking into consideration the fact and circumstances of the case, we are of the view that it is not a fit case to impose costs on the 'Corporate Debtor' having taken over by the 'Interim Resolution Professional'. The part of the impugned order dated 7th June, 2019 imposing cost of Rs. 25,000/- is set aside. The rest part of the impugned order is affirmed.

The appeal stands disposed of.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

Ar/g