

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 323 of 2019

IN THE MATTER OF:

Neeraj Jain

...Appellant

Vs.

Yes Bank Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. Darpan Wadhawa, Senior Advocate with Mr. Manik Dongra, Mr. Nikhil Singhvi, Mr. Arjun Syal, Mr. Manpreet Kaur and Mr. Shreyan, Advocates.

For Respondents: - Mr. Anant A. Pavgi and Mr. A. Anand, Advocates for R-2 (IRP).

O R D E R

10.04.2019— This appeal has been preferred by Mr. Neeraj Jain, Shareholder of 'M/s. Namo Alloys Pvt. Ltd.'- ('Corporate Debtor') against the order dated 25th March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, initiating the 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor' pursuant to an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short).

2. Learned counsel appearing on behalf of the Appellant submits that the Bank officials fraudulently withdrew the amount from the account of the 'Corporate Debtor' for which FIR No. 222/2018 has been lodged in

Contd/-.....

Palwal Police Station alleging Applicant Bank's involvement in defrauding the 'Corporate Debtor'. Pursuant to the said FIR, charge sheet has already been filed.

3. In view of such development, it is submitted that the application under Section 7 has been filed after embezzling the amount from the Bank Accounts of the 'Corporate Debtor'.

4. It is further submitted by the learned Senior Counsel for the Appellant that there are five 'Financial Creditors' (Banks) but four of them have not joined with the Respondent Bank and are co-operating with the 'Corporate Debtor' for recovery of amount fraudulently withdrawn from the account of the 'Corporate Debtor'.

5. It is further submitted by learned counsel for the Appellant that if the amount of Rs.23 Crores which has been fraudulently withdrawn from the 'Corporate Debtor' would have remained in the account of the 'Corporate Debtor', the 'Corporate Debtor' would not have failed to pay the dues of the 'Financial Creditors'. When we asked, it was informed that in all other Banks also the amount has been withdrawn fraudulently from the account of the 'Corporate Debtor'. However, it is not made clear as to why in all Bank accounts of the 'Corporate Debtor' fraudulent

withdrawals have been made if there is no link of one Bank and other Bank.

6. In reply, it is informed that actually the Chief Financial Officer of the 'Corporate Debtor' was involved who duly signed forged cheques and had withdrawn from the account.

7. Having heard Mr. Darpan Wadhawa, learned Senior Counsel for the Appellant and Mr. Anant A. Pavgi, learned counsel for the 'Interim Resolution Professional', we are of the view that an application under Section 7 being an independent proceeding has nothing to do with the pendency of the Criminal Case relating to misappropriation of the funds by the Chief Financial Officer of the 'Corporate Debtor' and the employees of the Banks. The Bank which is the 'Financial Creditor' is a separate entity from the Chief Financial Officer of the 'Corporate Debtor' or the individual employees of the Bank(s), if any, involved. The pendency of the investigation or trial cannot be a ground to refuse an application under Section 7 if the application is complete and there is a debt and default. The 'I&B Code' being a complete Code will prevail over the other Acts and no person can take advantage of the pendency of the case to stall Insolvency and Bankruptcy proceeding filed under Section 7.

8. For the reasons aforesaid, we are not inclined to interfere with the impugned order. The appeal is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

AR/g