

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.529 of 2020

[Arising out of Order dated 27.05.2020 passed by National Company Law Tribunal, New Delhi Bench – V in (IB) 2039 (ND)/2019]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Dr. Naveen Chaudhari
S/o Sh. R.S. Chaudhri,
R/o D-6, Sector 31,
Noida,
District Gautam
Budh Nagar,
Uttar Pradesh

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Appellant

Versus

1. Suraksha Asset
Reconstruction Limited
Acting in capacity as a
Trustee of
Suraksha ARC-012,
20th Floor, 'A' Wing,
Naman Midtown,
Senapati Bapat Marg,
Elphinstone Road,
Mumbai
Maharashtra-400013

Applicant/
Financial Creditor

Respondent No.1

2. Chandra Prakash
Interim Resolution
Professional of
Noida Medicate Centre
Limited,
58-B, Pocket – 4,
Mayur Vihar, Phase I,
Delhi – 110092

IRP

Respondent No.2

For Appellant:

Shri Prashant Katara, Advocate

For Respondents:

**Shri U.K. Chaudhary, Shri Chitranshul Sinha and
Ms. Sonali Khanna, Advocates (R-1)**

ORDER

08.06.2020 Heard Advocate Shri Prashant Katara for the Appellant. Perused the record and the Impugned Order. The learned Counsel for the Appellant is submitting that the Appellant is Director of the Corporate Debtor namely, M/s. Noida Medicate Centre Ltd. The Respondent No.1 filed Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) having No. (IB) 2039 (ND)/2019) against the Corporate Debtor before the National Company Law Tribunal, New Delhi Bench - V – Adjudicating Authority. This Application under Section 7 came to be admitted. Respondent No.1 (Applicant – Financial Creditor) claimed that the Corporate Debtor had obtained credit facilities from Kotak Mahindra Bank and in the account, there was default and the Corporate Debtor's account became NPA. The learned Counsel for the Appellant states that the Account had become NPA on 30th June, 2016.

2. It appears that the original Applicant – Financial Creditor claimed that Kotak Mahindra Bank executed the Assignment Agreement dated 29.09.2017 (Page – 105) in favour of original Applicant. On the same date, according to the learned Counsel for the Appellant, there was Restructuring Agreement executed between the Corporate Debtor and the original Applicant. (Same is at Page – 326). Learned Counsel for Appellant states that as per this Restructuring Agreement, the corporate Debtor paid Rs.1.17 Crores against the outstanding dues and Rs.33.50 Lakhs for processing fee. It is stated that subsequently, the original Applicant – Financial Creditor sent letter dated 12th February, 2019 (Page – 337) informing the Corporate Debtor as well as the Appellant that there were defaults in repayment and the concessions given

under the Restructuring Agreement were being withdrawn and the same was being revoked. Learned Counsel states that the original Applicant – Financial Creditor started treating the Corporate Debtor for dues as under the Assignment Deed and started claiming amounts on the basis of dues as with the Kotak Mahindra Bank. Learned Counsel states that the Financial Creditor started claiming dues of Rs.9 Crores as per the Assignment Deed which they had in their favour from Kotak Mahindra Bank. We have asked the learned Counsel as to how much according to the Corporate Debtor, are the dues outstanding. The learned Counsel states that the same may be a little higher than Rs.9 Crores but that would be as per Restructuring Agreement.

3. According to the Counsel, there are disputes with regard to steps taken under the Restructuring Agreement and is referring to Section 37 of the Indian Contract Act, 1872 which deals with obligations of parties under a contract. The learned Counsel then refers to Section 55 of the Indian Contract Act, 1872 to submit that it would be necessary to deal with the effect of failure to perform at a fixed time in contract in which time is essential. The learned Counsel states that these provisions were required to be considered with the facts involved between the parties, i.e. the original Applicant – Financial Creditor and the Corporate Debtor as according to the learned Counsel, the Corporate Debtor was not at fault while acting as per the Restructuring Agreement dated 29.09.2017. It is argued by the learned Counsel for the Appellant that in the light of these aspects, the Adjudicating Authority erred in admitting the Application under Section 7. Thus, the Appeal.

4. We have gone through the record and the Impugned Order and in our view, the fact remains that the loan was taken from Kotak Mahindra Bank somewhere in 2015 and admittedly, the Account became NPA on 30th June, 2016. The Application under Section 7 has been filed on 16.07.2019. There is no dispute that Kotak Mahindra Bank assigned its debts of five Accounts of Corporate Debtor in favour of original Applicant – Financial Creditor which were due from the Corporate Debtor as per the Assignment Deed dated 29.09.2017. When this is so, the original Applicant would step into the shoes of Kotak Mahindra Bank with the Assignment Deed executed in its favour. The subsequent Agreement between Kotak Mahindra Bank and the Corporate Debtor as regards execution of the Restructuring Agreement and whether there is default in the Restructuring Agreement or not, would not be issues which will be necessary for the Adjudicating Authority to decide. It may have been an effort by the Financial Creditor after the debt was assigned to it to work out the restructuring between itself and the Corporate Debtor. If there are disputes with regard to the actions taken on the basis of the Restructuring of the Agreement, that issue is not necessary for the decision by the Adjudicating Authority or this Appellate Tribunal in present set of facts. Broad outline remains that financial debt of Kotak Mahindra Bank was outstanding and the original Applicant – Financial Creditor took over the same by way of Assignment Deed and the amounts are still outstanding which are more than the benchmark under Section 4 of the IBC. There is debt due and default. We find no reason to interfere with the Impugned Order so as to entertain the Appeal.

The Appeal is dismissed without admitting the same.

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

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md