

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Comp. App (AT) (Insolvency) No. 875 of 2020

IN THE MATTER OF:

Mirco Dynamics

...Appellant

Versus

Cosmos Cooperative Bank Ltd. & Anr.

...Respondents

Present:

For Appellant : Ms. Malvika Trivedi and Mr. Ishrat Ali, Advocates

O R D E R
(Through Virtual Mode)

12.10.2020 Appellant – a shareholder of the ‘Mirco Dynamics Pvt. Ltd.’ (Respondent No. 2), through the medium of this appeal seeks reversal of the order of dismissal of M.A. Nos. 472/2019 and 479/2019 in terms of impugned order dated 18th March, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai Court-I as a sequel to directions passed by this Appellate Tribunal in ‘*Company Appeal (AT) (Insolvency) No. 1121 of 2019*’ filed by Mr. Ishrat Ali against the admission order passed by the Adjudicating Authority in regard to application under Section 7 of the I&B Code filed by Cosmos Co-operative Bank Limited which was held to be barred by limitation. This Appellate Tribunal while setting aside the impugned order of admission dated 23rd September, 2019 passed by the Adjudicating Authority dismissed the application preferred under Section 7 of I&B Code’ and directed the Adjudicating Authority to close the proceedings. The Adjudicating Authority, while closing the proceedings in the main Company Petition also closed all pending applications including M.A. 472/2019 and 479/2019 which related to complaint of perjury made by a

Director of the Corporate Debtor. Aggrieved of the same the Appellant has preferred the instant appeal.

2. Heard learned counsel for the Appellant. It is submitted that notwithstanding dismissal of application under Section 7 of the I&B Code by this Appellate Tribunal in appeal proceedings, the Adjudicating Authority ought to have decided these M.A. Nos. 472/2019 and 479/2019 relating to complaint of perjury emanating from a Director of a Corporate Debtor independently. It is contended that the setting aside of admission order of the application under Section 7 of the I&B Code by this Appellate Tribunal in appeal does not affect the jurisdiction of the Adjudicating Authority who had to enquire into the matter which essentially pertained to fraudulent initiation of Section 7 of the 'I&B Code' application. We are afraid that this argument cannot be accepted. A Five Member Bench of this Appellate Tribunal in case of Mr. Ishrat Ali (Supra) held that the application under Section 7 of the I&B Code filed by the 'Cosmos Co-operative Bank Limited' was barred by limitation. The impugned order dated 23rd September, 2019 passed by the Adjudicating Authority was accordingly set aside and the Adjudicating Authority was directed to close the proceedings. The order impugned in this appeal was passed in compliance to the judgment of this Appellate Tribunal as a sequel to the dismissal of application under Section 7 of the 'I&B Code'. Once the main application under Section 7 of the I&B Code, which was the basic edifice for passing of order of admission at the hands of the Adjudicating Authority, was dismissed and proceedings emanating therefrom and consequential thereto were closed, the incidental and ancillary applications

including the MAs in which the proceedings were closed in terms of the impugned order, did not survive for further consideration. With the closing of case by the Adjudicating Authority in compliance to the orders passed by this Appellate Tribunal in appeal, inquiry in initiation of insolvency resolution process alleged to be fraudulent or with malicious intent would be preposterous when the closure of such proceedings is a consequence of allowing of appeal against the order of admission passed by the Adjudicating Authority on the ground of limitation. In the given circumstances, no further enquiry in regard to the projected issue of fraudulent or malicious initiation of the insolvency resolution process would be warranted. The insolvency resolution process set in motion on the basis of a flawed order of admission which stands set aside for being hit by limitation stands terminated and all MAs relating to this process stand dismissed on legally tenable grounds. We find no flaw in the impugned order. The appeal is accordingly dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

/ns/gc/