

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 608-610 of 2018

IN THE MATTER OF:

Mr. Anthony Raphael Kallarakkal

...Appellant

Versus

Rajendra K. Bhuta & Ors.

...Respondents

Present:

For Appellant : Mr. Rajvardhan Singh, Advocate

For Respondents : Mr. Rajeev K. Panday, Mr. Rajeev M. Roy, Mr. P. Srinivasan, Mr. Ashish Verma and Ms. Nishtha Sikroria and Ms. Sowmya Saikumar, Advocates

ORDER

12.11.2018 This appeal has been preferred by the appellant 'Mr. Anthony Raphael Kallarakkal' against order dated 18th August, 2017; 5th April, 2018 and 18th July, 2018 along with petition for condonation of delay. Though the appeal is against the orders dated 18th July, 2018 and 18th August, 2017 which are hopelessly barred by limitation and cannot be entertained in view of sub-section (2) of Section 61 of the I&B Code, in spite of the same, we have gone through the impugned orders.

From the record we find that the 'corporate insolvency resolution process' was initiated against the 'corporate debtor' pursuant to an application under Section 7 of the I&B Code filed by 'The Abhyudaya Co-operative Bank Limited' (Financial Creditor). In the said case, the Miscellaneous Application was filed by the 'Resolution Professional' with the prayer in respect of a property bearing Plot No. 849, Road No. 9, Kalamboli, Panvel, District Rajgad, admeasuring 900 sq.

mtrs. which was valued Rs. 1.79 Crores. In the declaration of Liquidation, he advertised the same in the newspaper but due to obstruction from the side of the others, the complaint was made before the Police. The Adjudicating Authority by order dated 18th July, 2018 observed that the promoters and Directors if obstructing the commencement of liquidation, they will be liable to penal consequences as prescribed for punishment under Chapter-VII of the Code.

From the order dated 18th August, 2017, we find that the application which was filed on 9th June, 2017 under Section 7 of the I&B Code was admitted on the said date and the order of moratorium was passed. The appellant could not make it clear as to how the order of liquidation was passed earlier if the application under Section 7 filed by 'Abhyudaya Co-operative Bank Limited' admitted on 18th August, 2017.

It appears that the order dated 18th August, 2017 passed by the Adjudicating Authority was challenged before the Adjudicating Authority by filing a Miscellaneous Application No. 239 /2018. It was submitted that the order was passed in violation of rules of natural justice. However, taking into consideration the earlier record, while the Adjudicating Authority held that there is 'debt' and 'default', further observed that the order passed earlier cannot be reviewed or recalled in absence of any provision. The Miscellaneous Application was rejected by order dated 5th April, 2018. The said order was handed over to the 'Corporate Debtor' on 17th September, 2018 whereinafter this appeal has been filed. But it appears that the appeal before this Tribunal was presented on 11th September, 2018 that is prior to issuance of the certified copy of the order. There is an

ambiguity as to how a certified copy issued on 17th September, 2018 have been enclosed in the appeal filed by the 'Corporate Debtor' on 11th September, 2018. In absence of any explanation, we are not deciding the merit.

For the said reason without going into the merit of the case and the appeal being barred by limitation is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk/