

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 807 of 2020

IN THE MATTER OF:

JM Financial Asset Reconstruction Company Ltd. ...Appellant

Versus

Samay Electronics Pvt. Ltd. ...Respondent

Present:

**For Appellant: Mr. Sonal Jain and Mr. Ishkaran Singh Bhandari,
Advocates**

For Respondent:

O R D E R
(Through Virtual Mode)

22.09.2020: Conflicting orders have been passed by the two Members comprising the Bench of Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court I. While in terms of order pronounced on 26th February, 2020, the Technical Member has, after recording its reasons directed admission of application under Section 7 of the I&B Code filed by the Appellant – ‘JM Financial Asset Reconstruction Company Ltd.’ (Financial Creditor), the dissenting view expressed by the Member Judicial found the application under Section 7 filed by the Appellant as being hit by limitation entailing its rejection.

Mr. Sonal Jain, learned counsel representing the Appellant submits that mandate of Section 419(5) of the Companies Act was not followed as the two Members of the Bench had conflicting views on the vital issues resulting in disposal of application in two different ways viz. one allowing admission of application under Section 7 and other rejecting it. He is accordingly beseeching this Appellate Tribunal

to direct the Adjudicating Authority to follow the mandate of Section 419(5) of the Companies Act.

After hearing learned counsel for the Appellant, we deem it appropriate to dispose of this appeal with direction to the same Bench of the Adjudicating Authority, which passed two conflicting orders, to make a reference to Hon'ble President, NCLT, if not already made, in terms of Section 419(5) of the Companies Act, 2013, for hearing on the issues and points on which the two Members of the Bench had divergent view in the split verdict so that the matter is placed before a third Member for hearing and the Company Petition is decided in accordance with the opinion of the majority of the Members who heard the case including the member before whom it is placed. The appeal is accordingly disposed of.

Copy of this order be sent to the Bench of the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court-I as also to Hon'ble President, NCLT, New Delhi for information and compliance.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Venugopal M.]
Member (Judicial)**

**[Kanthi Narahari]
Member (Technical)**

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