

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 713 of 2019

IN THE MATTER OF:

Prayag Polytech Pvt. Ltd.

...Appellant

Vs

Gem Batteries Pvt. Ltd.

....Respondent

Present:

For Appellant: Mr. Ayandeb Mitra and Ms. Aastha Trivedi,
Advocates

For Respondents:

ORDER

24.09.2019 Heard learned Counsel for the Appellant. The Appellant filed Section 7 proceeding under Insolvency and Bankruptcy, 2016 (In short **IBC**) before the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court-III) against Gem Batteries Pvt. Ltd. which has been rejected by the Adjudicating Authority vide order dated 07.05.2019.

2. It was claimed before the Adjudicating Authority that an amount of Rs. 20 lakhs were disbursed by the Appellant, to the Corporate Debtor on 05.03.2016. It was claimed that on 30.05.2016, the Corporate Debtor had returned Rs. 5 lakhs and another amount of Rs. 10 lakhs on 11.04.2017. According to the learned Counsel for the Appellant, Respondent also paid certain amount towards interest. Learned Counsel for the Respondent further states that the Appellant on 02.01.2019 sent recall notice seeking repayment of the loan which had been advanced. Learned Counsel for the Appellant further relied on TDS deducted by Corporate Debtor to prove that there was financial debt.

3. The Adjudicating Authority heard the Appellant and in the impugned order dated 7th May, 2019 observed in paragraph-9 and 11 as under:

.....

“ 9. *In the present case, no document has been produced on the part of petitioner by way of any loan agreement or demand promissory note or such other document to establish that the money is payable on demand and there has been default and that Corporate Debtor is also bound to pay interest on the loan amount made available by the Financial Creditor. It is also noteworthy to mention that it is stated that there is only an oral agreement between the parties regarding the loaned amount.*

11. *It is stated in the recall notice filed as “Annexure-5” of the petition and also in the “Page9” of the typed set of the petition that till 25.12.2018 interest of Rs. 1,31,440/- was received by the Financial Creditor. However, the payment of such interest is not reflected in the document submitted by the Petitioner.”*

...

Adjudicating Authority also found that no Financial Contract was there.

4. Learned Counsel for the Appellant submits that the Corporate Debtor deducted TDS on the interest paid by the Corporate Debtor while returning the loan which is sufficient to show that there was financial debt. Regarding there

being no agreement or demand promissory note or such other document etc., learned Counsel for the Appellant submits that Section 10 of the Contract Act, 1872 shows that agreement could be even oral.

5. Learned Counsel for the Appellant further submits that “financial contract” as defined in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 does not debar oral contract and financial contract can be oral in terms of Section 10 of the Contract Act. According to him Section 7 application under IBC should not have been rejected.

6. We have gone through the records and the impugned order. Merely pointing out that TDS was deducted would not be sufficient to conclude that there was financial debt. TDS can be deducted for various reasons.

7. As regard relying on Section 10 of the Contract Act, 1872, in our view IBC is a complete code in itself. Section 238 of IBC has overriding effect on provisions inconsistent with IBC. The ‘Financial contract’ is defined in “Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016” Rule 3(1)(d) requires setting out the terms of the financial debt including tenure etc. We find that Appellant has failed to show any record showing financial debt to be there. As such, we are unable to find any fault in the impugned order while rejecting Section 7 application.

8. At this stage, learned Counsel for the Appellant submits that it was improper on the part of the Adjudicating Authority to impose a fine of Rs. 1 lakh relying on provision of Section 75 of IBC which relates to false information.

Looking to the facts even if Appellant failed to make out case, that by itself may not be sufficient to invoke Section 75 of IBC.

9. We set aside the part of impugned order of the Adjudicating Authority as regards the imposing of a fine of Rs. 1 lakh relying on Section 75 of IBC. Rest part of the impugned order does not call for interference.

The appeal is disposed of accordingly at the stage of admission.

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

(Kanthi Narahari)
Member(Technical)

Akc/Sk