

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins) No. 256 of 2020

IN THE MATTER OF:

Ranjit Kapoor

....Appellant

Vs.

Asset Reconstruction Company (India) Ltd & Anr.

....Respondents

Present:

For Appellant: Mr. Alishan Naqvee, Mr. Mayank Bughani, Ms. Arushi Sralech, Mr. Swet Shikha, Md. Kamran and Mr. Swanit Chaudhry, Advocates

For Respondents:

ORDER

11.02.2020: The Appellant/ Promoter, as an 'aggrieved person' has projected the instant appeal under 61 of the I&B code, against the impugned order dated 13.01.2020 passed by the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi in CA No. 190 (PB)/2020 in CP (IB) No. 160 (PB)/2018.

2. Earlier, the Adjudicating Authority (National Company Law Tribunal) New Delhi, Principal Bench while passing the Impugned Order had observed and held as under:-

"Order

CA-190 (PB)/2020

This is an application filed by the corporate debtor for following reliefs:-

A. Forthwith stay all pending proceedings in CA-455 (PB)/2018 filed in the above titled company petition CP. No. (IB)-160 (PB)/2018 till the adjudication of the present application and dismiss the company petition (IB)- 160

(PB)/2018 in view of the law settled by the Hon'ble Supreme Court of India in Gaurav Hargovindbhai Dave V. Asset Reconstruction Company (India) Ltd. & Anr.;

B. Pass any other order(s) as may be deemed fit in the facts and circumstances of the instant case;”

It appears that this case was admitted on 13.06.2018, wherein this corporate debtor was very much present and made his submissions. Now, after this case has been admitted, the only recourse available to this applicant is to file an appeal assailing against the admission order already passed but not to file an application seeking stay under the grab of inherent power lying with this Bench. For this kind of recourse is not present under Insolvency & Bankruptcy Code, this application is hereby dismissed as misconceived with liberty in accordance with law.”

3. The Learned Counsel for the Appellant contends before the Adjudicating Authority that 1st Respondent filed a petition under Section 7 of the I&B Code being CP (IB) No. 160 (PB)/2018 on 10.01.2018 and the account of Corporate Debtor became 'Non Performing Assets' on 06.11.2011, therefore, the application filed by the Financial Creditor was barred by Limitation. On 13.06.2018 the Adjudicating Authority passed an order admitting the 'Application' and appointed an Interim Resolution and declared moratorium etc.

4. The main grievance of the Appellant is that the Adjudicating Authority while passing the order on 13.06.2018 in Section 7 application had omitted to consider and adjudicate as to whether the said CP (IB) No. 160 (PB)/2018 was filed within the period of 'Limitation'.

5. It is not in dispute that the Appellant has assailed the correctness, viability and legality of the order dated 13.06.2018 of the Adjudicating Authority before this Appellate Tribunal in Company Appeal (AT) (Ins.) No. 410/2018 - *Ranjit Kapoor Vs. Asset Reconstruction Company (India) Ltd.* On

30.10.2018, the said 'Appeal' was dismissed by this Appellate Tribunal *inter alia* observing that till the Corporate Debtor alleges the same and raise an objection under Section 65 of I&B Code, 2016 before the Adjudicating Authority, the Appellate Tribunal cannot look into such question of fraud.

6. Advancing his arguments the Learned Counsel for the Appellant comes out with a plea that the question as to whether said CP (IB) No. 160 (PB)/2018 was filed within a period of Limitation was not adjudicated in the order as well. In fact, the clear cut stands of the Appellant is that the application CP (IB) No. 160 (PB)/2018 before the 'Adjudicating Authority' under Section 7 of the I&B Code would be barred by Limitation since the same was filed beyond three years from the date of 'Non Performing Asset' as per decision of Hon'ble Supreme Court of India *Gaurav Hargovindbhai Dave V. Asset Reconstruction Company (India) Ltd. & Ors.* dated 18.09.2019.

7. Apart from the above, the Learned Counsel for the Appellant places reliance on the judgment of this Tribunal in Company Appeal AT (Ins.) No. 525/2019 dated 11.12.2019 in *V Hotels Ltd. V. Asset Reconstruction Company (India) Ltd.* Moreover, the Learned Counsel for the Appellant also seeks in aid of the judgment of this Tribunal in Company Appeal (AT) (Ins.) No. 407 of 2019 *C. Shivakumar Reddy V. Dena Bank and Ors.*

8. It comes to be known that on 03.01.2020 the Appellant filed an application in CA No. 190 (PB)/2020 seeking the direction for disposal of Company Appeal CP (IB) No. 160 (PB)/2018 under rule 11 of National Company Law Tribunal, 2016, because of the reason that the petition was barred by law of Limitation.

9. At this juncture, it is worthwhile to refer to the judgment dated 30.10.2018 in Company Appeal (AT) (Ins) 410/2018 *Ranjit Kapoor Vs. Asset Reconstruction Company (India) Ltd., Mumbai* whereby and whereunder at paragraph 5 to 8 observed as under:-

"5. We find that there are two Assignment Agreements, one dated 21st July, 2014 and the other dated 17th April, 2015

executed in favour of the Respondent. For initiation of Corporate Insolvency Resolution Process, the Respondent-Financial Creditor relied on the Assignment Agreement dated 17th April, 2015. The Corporate Debtor has not disputed the fact that there is a debt due in law and fact and they defaulted in paying the dues. It is not the case of the Corporate Debtor that there is no debt in law or in fact.

6. The question whether the Assignment Agreement dated 17th April, 2015 is genuine or not cannot be looked into by the Adjudicating Authority while deciding the application under Section 7 or by this Appellate Tribunal, till the Corporate Debtor alleges the same and raise the objection under Section 65 of the Code. No such plea has been taken by the Corporate Debtor before the Adjudicating Authority alleging fraud on the part of the Financial Creditor for initiation of proceedings under Section 65 of the code. Therefore, this Appellate Tribunal cannot look into such question of fraud.”

7. Further, the provision of NPA relates to SARFAESI Act, 2002 and has nothing to do with Code.

8. We find no merit in this appeal. The appeal is accordingly dismissed. No cost.

10. This Tribunal has given anxious consideration to the arguments advanced on the side of the Appellant.

11. Indeed, Section 61 (1) & (2) of the Insolvency and Bankruptcy Code 2016, reads as under:-

“61.(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this

part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided *that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”*

12. A mere glance of the ingredients of the Section 61 (1) & (2) of the I&B Code indicates that though any person aggrieved of an order of Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal, this Tribunal is of the earnest opinion that the present Appeal preferred by the Appellant is *per se* not maintainable in Law because of the established fact that when once a case was admitted under IBC, the only option available to a party as an ‘Aggrieved Person’ is to prefer an ‘Appeal’ of course in accordance with Law, against the ‘Order of Admission’ already passed and not to prefer an application CA No. 190 (PB)/2020 seeking stay of all the pending proceedings in CA No. 455 (PB)/2018 filed in CP (IB) No. 160 (PB)/2018 till its adjudication and dismiss the Company Petition.

13. Be it noted, that ‘Silence’/ laches at a given point of time may given room for a plea of ‘Estoppel’ in the considered opinion of this tribunal. This apart when an order of admission was passed in the subject matter in issue, and later when the Appellant when on earlier occasion filed Company Appeal (AT) (Ins.) No. 410/2018 and the same was dismissed on 30.10.2018, then he is stopped by its own conduct as a principle of ‘Equity’, Justice and good conscience to embark upon another round of litigation seeking stay of

all the pending proceedings in CA No. 455 (PB)/2018 in CP (IB) No. 160 (PB)/2018, which is an otiose. Viewed in this perspective the present appeal is *per se* not maintainable in the eye of law. Accordingly, the instant appeal is dismissed as not maintainable but without costs.

[Justice Venugopal M.]
Member (Judicial)

[V. P. Singh]
Member (Technical)

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