

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 608 of 2019

IN THE MATTER OF:

Sansar Chand Sharma

...Appellant

Vs.

Anurag Chandra & Ors.

.... Respondents

Present:

Appellant: None

**Respondents: Ms. Manisha Chaudhary, Mr. Mansumyer Singh and
Mr. Himanshu Handa, Advocates for R-1.**

O R D E R

24.10.2019:

1. The Appellant – ‘Sansar Chand Sharma’ Director of suspended Board of Corporate Debtor- ‘Affinity Beauty Salon Private Limited’ has filed this appeal. When this appeal was moved before the Tribunal, on 31.05.2019, in view of the submissions made, *inter alia* following was recorded:

“Learned Counsel for the Appellant submits that with regard to the debt amount M/s. ACPC Enterprises earlier moved before the Adjudicating Authority by filing an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code), which was rejected on 10th November, 2017. Thereafter, the Partner of M/s. ACPC Enterprises in his individual capacity, i.e., Mr. Anurag Chandra moved an application under Section 7, which was admitted on 14th December, 2018. When this was brought

to the notice of the Adjudicating Authority, the prayer for recall of the order of admission was rejected by impugned order dated 2nd May, 2019.”

2. Respondent No. 1 has appeared and filed the reply.
3. On 24.09.2019 none was present for the Appellant. Even today earlier when matter was called none appeared for the Appellant and even on the second call nobody is present for the Appellant, nor the Appellant is himself present.
4. Learned Counsel for the Respondent states that the 330 days period prescribed for completing Corporate Insolvency Resolution Process would expire on 10.11.2019. He states that in the process the Appellant has also filed the Resolution Plan as a Resolution Applicant. We have gone through the impugned order which is at Page 69 (Annexure A1) and reads as under:-

“Order

CA-816 (PB)/2019

This is an application with a prayer to dismiss CP No. (IB)-786(PB)/2018. As a matter of fact, the application was admitted on 14.12.2018 and once the CIRP has been triggered by admission of the petition on behalf of the financial creditor under Section 7 then the proper course for the applicant is to challenge the order before any superior forum. No such request made in this application can be entertained once the petition stands admitted.

Accordingly, the application is dismissed.”

5. By the impugned order, the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi declined to entertain the application to dismiss the application as vide its earlier order dated 14.12.2018 (Annexure A-2) Corporate Insolvency Resolution Process was initiated after admitting the application. It cannot be said that this impugned order is in any manner wrong. The adjudicating authority cannot re-open the question of admission of Section 7 application and set aside its own admission of the application which was under Section 7 of the Insolvency and Bankruptcy Code, 2016. We do not find any error in the impugned order.

6. With regard to the submissions by Appellant as made on 31.05.2019 which have been noted and reproduced above even if we were to look into the merits of the application which was not entertained by the Adjudicating Authority, it can be seen that earlier Adjudicating Authority had rejected the Section 7 application which was filed by M/s ACPC Enterprises (Annexure 7) as an unregistered partnership firm and amount was claimed as share subscription amount and Financial Debt. Subsequently, the partner of the Unregistered Partnership firm 'Anurag Chandra', Financial Creditor filed Company Petition and the order dated 14.12.2018 was passed by the Adjudicating Authority admitting the Section 7 application. The subsequent order admitting Section 7 application took note of the earlier rejected application of unregistered partnership. As such on merits also

there is nothing to have a relook at the order admitting Section 7 application. There is no substance in this appeal.

The appeal is dismissed with the observations as above.

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

[Kanthi Narahari]
Member (Technical)

[V. P. Singh]
Member (Technical)

sa/md