

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1170 of 2019**

**IN THE MATTER OF:**

**Mr. Suneet Dewan**

**...Appellant**

**Vs.**

**Shriram Transport Finance Co. Ltd. & Anr.**

**...Respondents**

**Present: For Appellant: - present but not marked appearance.**

**For Respondents: - Mr. Jeevesh Nagrath, Advocate.  
Mr. Navjeet Singh, IRP.**

**O R D E R**

**20.11.2019—** ‘Shriram Transport Finance Company Limited’- (‘Financial Creditor’) filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘Trans Gulf Frozen Food Containers Private Limited’- (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, by impugned judgment dated 17<sup>th</sup> September, 2019 admitted the application.

2. Learned counsel appearing on behalf of the Appellant submitted that the application under Section 7 was barred by limitation as default took place in the year 2013. However, the aforesaid submission has been opposed by Mr. Jeevesh Nagrath, counsel appearing on behalf of the ‘Financial Creditor’.

Contd/-.....

3. From the record, we find that the 'Corporate Debtor' failed to pay the amount in terms with the agreement and the matter was referred to the Arbitral Tribunal. The Sole Arbitrator Mr. B.L. Gupta, Additional District and Sessions Judge (Retd.) passed award in favour of the 'Financial Creditor' on 21<sup>st</sup> May, 2018.

4. Learned counsel for the Appellant submits that the *ex-parte* order was passed on 8<sup>th</sup> June, 2017 by the Sole Arbitrator with respect to Loan-cum-Hypothecation Agreements and the final Award was passed on 21<sup>st</sup> May, 2018 with regard to 2 Loan cum Hypothecation Agreements.

5. It is submitted that the application under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed by the 'Corporate Debtor' which is pending consideration before the Court of Competent Jurisdiction.

6. Learned counsel for the Appellant submitted that there is a dispute about the quantum of payment. However, merely because the Appellant has disputed the claim it will not affect the right of the 'Financial Creditor' to file application under Section 7.

7. From the record, we find that on challenge of the award under Section 34 of the Arbitration and Conciliation Act, 1996, learned Additional District Judge, Tis Hazari District Courts, Delhi, vide order dated 31<sup>st</sup> March, 2018 granted a conditional stay on the petitions under Section 34 of the Arbitration and Conciliation Act, 1996. The condition for stay was for depositing of Rs.4,00,000/- by the 'Corporate Debtor' for each of the Arbitral Awards within a period of ten days from the date of the order which expired on 10<sup>th</sup> April, 2018. The 'Corporate Debtor' having defaulted to make payment in terms with the order of the Competent Court on 10<sup>th</sup> April, 2018, we hold that the application under

Section 7 so filed by the 'Financial Creditor' was maintainable and thereby we find that there is no delay in preferring the application.

8. Further, the amount of default being more than Rupees One Lakh, the Adjudicating Authority has rightly initiated the proceedings against the 'Corporate Debtor'.

We find no merit in this appeal. It is accordingly, dismissed. No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

(Justice Venugopal M)  
Member(Judicial)

Ar/g