

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 111 of 2019

IN THE MATTER OF:

Ranjit Kapoor

...Appellant

Versus

**Asset Reconstruction Company
(India) Ltd. & Ors.**

...Respondents

Present:

For Appellant :

**Mr. Sukumar Pattjoshi, Senior Advocate with
Mr. Mayank Bughani, Advocate**

For 1st Respondent:

**Mr. Himanshu Bhushan and Mr. Ankit Jain,
Advocates**

For 2nd Respondent :

**Mr. Gautam Singhal, Advocate
Mr. R. Wali, Advocate for PNB**

O R D E R

03.05.2019 The Appellant – Shareholder/Director of ‘M/s. White Metals Limited’ (Corporate Debtor) earlier moved before this Appellate Tribunal in “*Company Appeal (AT) (Insolvency) No. 410 of 2018*” challenging the initiation of ‘Corporate Insolvency Resolution Process’ against the ‘Corporate Debtor’ initiated at the instance of ‘Asset Reconstruction Company (India) Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, the ‘**I&B Code**’). The main plea taken by the appellant is that the Assignment Agreement dated 17th April, 2015 is not genuine. This Appellate Tribunal by order dated 30th October, 2018 observed as follows:

- “4. We have heard the learned Counsel appearing on behalf of the parties and perused the records.
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.”*

2. Subsequently, it appears that the Appellant thereafter filed an application under Section 65 of the I&B Code alleging that the insolvency resolution process was fraudulent or with malicious intent other than for the resolution of insolvency and the Adjudicating Authority by impugned order dated 15th January, 2019 rejected such allegation. Learned counsel appearing on behalf of the appellant again relied upon the Assignment Agreement and it was submitted that it was registered in NOIDA and the Assignment is related to sale of the assets. However, that cannot be a ground to allege malicious intent on the part of the ‘Financial Creditor’ for the purpose of Section 65 of the I&B Code.

3. We have already held that the validity of the Assignment Agreement cannot be decided by the Adjudicating Authority and, therefore, the same issue could not be reiterated.

4. After the order was dictated, learned counsel for the Appellant sought permission to withdraw the appeal.

5. The permission is granted with clear stipulation that the Appellant will not raise such matter in future. The appeal stands disposed of as withdrawn with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc