

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 122 of 2019

IN THE MATTER OF:

Sanjay Kapoor

...Appellant

Versus

TDI Infrastructure Ltd.

...Respondent

Present:

For Appellant : Ms. Priyanjali Singh and Mr. Karunesh, Advocates

O R D E R

06.02.2019 The appellant, claiming to be an allottee falling within the purview of 'financial creditor', is aggrieved by the impugned order passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench on 18th January, 2019. By virtue of that, appellant's application under Section 7 of the Insolvency & Bankruptcy Code, 2016 ('I&B Code', for short) was disposed of as having rendered infructuous on the ground that 'corporate insolvency resolution process' had already been initiated against the 'Corporate Debtor' vide order dated 2nd January, 2019 in '*M/s. Navkar Traders vs. TDI Infrastructure Ltd.*' – '*(IB) No. 1541 (ND) of 2018*'. The Adjudicating Authority observed in the impugned order that the 'Financial Creditor' would be at liberty to state its claim before the 'IRP'. Learned counsel for the appellant submits that the order of admission dated 2nd January, 2019 passed in '*(IB) No. 1541 (ND) of 2018*' has been set aside by this Appellate Tribunal in terms of order dated 17th January, 2019 passed in '*Company Appeal (AT)(Insolvency) No. 45 of 2019*'. Perusal of the aforesaid order passed by this Appellate Tribunal substantiates the argument advanced by the appellant herein. The order of admission was set aside after

holding that no debt was payable in law and consequently no default had occurred *qua* the 'operational debt' when the impugned order of admission of application under Section 9 of the 'I&B Code' was passed by the Adjudicating Authority. It is submitted that the appellant is left remediless as it cannot file its claim before the IRP who has ceased to exist.

2. Having heard the learned counsel for the appellant, this Appellate Tribunal is of the considered view that the impugned order appears to have been passed oblivious of the fact that this Appellate Tribunal had set aside the order of admission of application under Section 9 of the 'I&B Code' one day prior to passing of the impugned order by the Adjudicating Authority. This can be attributed to lack of knowledge. However, the appellant cannot be made to suffer and become remediless as the opportunity to file its claim during 'corporate insolvency resolution process' has been lost on account of the aforesaid 'corporate insolvency resolution process' having been terminated.

3. In the given circumstance, it would be proper to dispose of this appeal by allowing the appellant to approach the Adjudicating Authority with an application for revival/restoration of the application and the Adjudicating Authority would revive/restore the application and pass appropriate orders thereon in accordance with law. The impugned order is accordingly set aside.

4. The appeal stands disposed of with aforesaid observations.

5. Copy of this order be sent to the Adjudicating Authority, New Delhi Bench.

[Justice Bansilal Bhat]
Member (Judicial)

/ns/uk/