

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 772 of 2019

IN THE MATTER OF:

Mr. Basab Biraja Paul & Anr.

...Appellants

Versus

**Edelweiss Asset Reconstruction
Company Limited & Anr.**

...Respondents

Present:

For Appellants : **Mr. Abhijeet Sinha, Mr. Rohan Jaitley, Ms. Neeha
Nagpal and Mr. Amit Vyas, Advocates**

For 1st Respondent: **Mr. Siddharth Sharma and Mr. Darpan Sachdeva,
Advocates**

O R D E R

31.07.2019 *Prima facie*, we are of the opinion that the Appellants cannot plead that the 'debt' is not payable in law and it is barred by limitation but we find that a 'Deed of Guarantee' was instituted on 22nd June, 2012 and a notice u/s 13(2) of the SARFAESI Act was issued on 5th August, 2016 followed by Demand Notice. However, this is a *prima facie* view and not our final decision which we will express after hearing the learned counsel for 1st Respondent. However, learned counsel appearing on behalf of the Appellant submits that the Appellants are ready to settle the matter with 1st Respondent, proposal has already been given and 'Committee of Creditors' has not been constituted. In any case, they will negotiate the matter with 1st Respondent.

Let notice be issued on the Respondents.

Mr. Siddharth Sharma, Advocate appears on behalf of 1st Respondent (Financial Creditor). He is allowed 7 days' time to file reply-affidavit. Rejoinder, if any, be filed by the Appellant within 7 days thereof.

In the meantime, let notice be issued on 2nd Respondent (Resolution Professional) by Speed Post. Requisite along with process fee, if not filed, be filed by 1st August, 2019. If the appellant provides the *e-mail* address of the 2nd Respondent, let notice be also issued through *e-mail*. *Dasti* service is permitted.

Post the case 'for orders' on **21st August, 2019**. The appeal may be disposed of on the next date.

To give one opportunity to the Appellant to amicably settle the matter with 1st Respondent, we direct the 'Resolution Professional' not to constitute the 'Committee of Creditors', if not yet constituted, till the next date.

In the meantime, the 'Interim Resolution Professional' will ensure that the company remains going concern and will take assistance of the (suspended) Board of Directors and the officers/ Directors/employees. The person who is authorised to sign the bank cheques may issue cheques but only after approval of the 'Interim Resolution Professional'. The bank account of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of the employees'/workmen electricity bills etc.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/sk