

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 95 of 2017

IN THE MATTER OF:

Lokhandwala Kataria Construction Pvt. Ltd.

...Appellant

Versus

Nisus Finance & Investment Manager LLP.

...Respondent

Present: For Appellant: - Shri Abhiman Vashist, Sr. Advocate, Shri Peshwan Jehangir and Shri Snehal Kakrania, Advocates

For Respondent: Shri Shiv Kumar Suri and Shri Shikhil Suri, Advocates

O R D E R

13.07.2017 This appeal is preferred by the appellant, Corporate Debtor against order dated 15th June, 2017 passed by learned Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai in CP No.61/I & BP/NCLT/MAH/2017 whereby and whereunder the application preferred by the respondent, financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') has been admitted, with following observation and direction:

"It is very much evident on the record the first cheque issued for redemption of the part of the debenture being dishonoured, it is evident that default has occurred and the Corporate Debtor is under obligation to make repayment to the debenture holders, the same not being made, this application is fit for initiating corporate insolvency resolution process. Accordingly, this application is hereby admitted."

Learned counsel appearing on behalf of the respondent – Financial Creditor submitted that the parties have settled the dispute and part amount has already been paid. This is also highlighted by learned counsel for Corporate Debtor. However, such settlement cannot be ground to interfere with the impugned order in absence of any other infirmity.

At this stage, we may notice and refer Rule 8 of I&B (Application to Adjudicating Authority) Rules, 2016, which reads as follows:

“8 Withdrawal of Application – The Adjudicating Authority may permit withdrawal of the application made under Rules 4, 6 or 7, as the case may be, on a request made by the applicant before its admission.”

Thus, before admission of an application under Section 7, it is open to the Financial Creditor to withdraw the application but once it is admitted, it cannot be withdrawn and is required to follow the procedures laid down under Sections 13, 14, 15, 16 and 17 of I&B Code, 2016. Even the Financial Creditor cannot be allowed to withdraw the application once admitted, and matter can not be closed till claim of all the creditors are satisfied by the corporate debtor.

Mere admission without subsequent step of advertisement having carried out, would not amount to refusal of claim of other creditors. Such submission as made by learned counsel for the appellant cannot be accepted in view of the provisions of the Act.

Learned counsel for the appellant requests to exercise inherent power, under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016

which reads as follows:

“11. Inherent powers – Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.”

However, as the said Rule 11 has not been adopted for the purpose of I&B Code, 2016 and only Rules 20 to 26 have been adopted in absence of any specific inherent power and where there is no merit, the question of exercising inherent power does not arise.

We find no merit in this appeal. The appeal is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)