

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****COMPANY APPEAL (AT) (INSOLVENCY) NO. 1513 OF 2019****In the matter of:**

Kotak Mahindra Bank

Appellant

Vs

Testtex India Laboratories Pvt Ltd & Ors

Respondents

Mr. Arvind Nayar, Sr. Advocate, Mr Amkit Mahaliyan, Advocate, Ms Upasana Chandrashekar, Advocates for appellant.

M Prakash K Pandya, PCS for Respondent.

ORDER

03.03.2020- The appellant, Kotak Mahindra Bank Ltd, filed the appeal against the order dated 25.11.2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai by which the Adjudicating Authority has rejected the application filed by the appellant under Section 7 of the Insolvency & Bankruptcy Code, 2016.

2. Learned counsel for the appellant submits that the appellant (financial creditor) has filed an application under Section 7 of I&B Code. After completion of pleadings appellant on 16.4.2019 requested for admission of the application. However, Respondent (Corporate Debtor) insisted that on certain instalments he is ready to pay the debt. Therefore, on the direction of the Adjudicating Authority, appellant tried to settle the matter. After about 2 months when the matter came up for hearing on 11.6.2019 on that date the appellant has informed that the efforts of settlement has exhausted and Respondent (Corporate Debtor) is not cooperating for amicable settlement. However, the case was adjourned for 17.7.2019 and 28.8.2019 but no

settlement can be arrived at. Even though Learned Adjudicating Authority by the impugned order dated 25.11.2019 has rejected the application on the ground that the appellant is settling the financial debt and received substantial part payment and the appellant is in process of settlement. However, actually there was no settlement between the parties.

3. Learned counsel for the appellant further submits that Adjudicating Authority erroneously rejected the application whereas the Respondent is admittedly defaulter. It is incorrect that substantial part payment has been made by the Respondent. It is also incorrect that the settlement process is going on between the parties. As per sub-section (5)(b) of Section 7 of I&B Code, Adjudicating Authority can reject the application only on the ground that default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed resolution professional. None of the condition exists in this case. He further submits that it will be appropriate that the impugned order may be set aside and matter be remitted to Adjudicating Authority for deciding afresh.

4. Learned PCS appearing on behalf of the Respondent is not objecting the prayer for remitting the matter to the Adjudicating Authority.

5. We have gone through the order sheet of NCLT dated 16.4.2019, 11.6.2019, 17.7.2019, 28.8.2019 and also perused the impugned order. It reflects from the order sheet that at the request of the Respondent (Corporate Debtor) the Adjudicating Authority has given sufficient time for settlement. However, the settlement cannot be arrived at by the parties whereas in the impugned order Learned Adjudicating Authority has mentioned that the

settlement process between the parties is going on. In para 5 of the impugned order it is mentioned that substantial part payment has been received by the appellant. This is also not correct because the total amount due is Rs.1340 lakhs. However, Respondent has paid only 49 lakhs upto May, 2018 (in the order sheet dated 16.4.2019 inadvertently May, 2019 is mentioned).

6. Undisputedly the Respondent (Corporate Debtor) is a defaulter and the application is not rejected on any of the grounds provided in the sub-section (5)(b) of Section 7 of I&B Code. Thus we are of the view that impugned order is not sustainable in law as well as in facts. Therefore, the impugned order is hereby set aside and the matter is remitted to Adjudicating Authority for deciding the application afresh uninfluenced by the impugned order.

7. Since this application is filed in the year 2018, therefore, we hope and trust that the Adjudicating Authority will decide the Application under Section 7 of I&B Code as per law expeditiously.

Parties are directed to appear before the NCLT Mumbai 23.3.2020.
However, no order as to cost.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

Bm/kam