

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 1147 of 2019

[Arising out of Order dated 17th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi in Company Petition No. (IB)-1620(PB)/2018].

IN THE MATTER OF:

Hardeep Singh Sawhney

.....Appellant

Vs.

Sawhney Builders Pvt. Ltd.

.....Respondent

Present :

For Appellant: Mr. Dhruv Madan, Mr. Vivek S.Bishnoi, Advocates

For Respondents: Mr. Rajan Sabharwal, Ms. Bhvya, Ms. Dipti Jain, Advocates

J U D G M E N T

VENUGOPAL M. J.

The Appellant/'Financial Creditor' had projected the Application Under Section 7 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) read with Rule 4 of the 'I&B' Code Rules, 2016 before the Adjudicating Authority praying to initiate 'Corporate Insolvency Resolution Process' in respect of Respondent / 'Corporate Debtor'.

2. The 'Appellant' / 'Financial Creditor' as an 'Aggrieved' person has focused the instant Company Appeal before this Tribunal being dissatisfied the Impugned Order of dismissal of the Application Under Section 7 of the 'I&B' Code dated 17th September, 2019, passed by the Adjudicating Authority.

3. The Learned Counsel for the Appellant submits that the mother of the 'Appellant' / 'Financial Creditor' booked one Villa on 21st April, 2014, in the plot area of 2000 Sq.Yd. and having a built up area of 8245 Sq. Ft. In this connection, the Learned Counsel for the Appellant / 'Financial Creditor' points out that the 'Respondent' / 'Corporate Debtor' was to handover the possession of the said flat within 3 years from the date of 90% of the total payment of the said flat.

4. It is represented on behalf of the Appellant that his mother, believing the assurances made by the Representatives of the 'Respondent' / 'Corporate Debtor' finalised the purchase of one Villa for a total consideration of Rs. 7,10,00,000/- (vide Registration form dated 21st April, 2014) and was allotted Villa No. 5 in Khasra No. 583 also that the mother of the 'Appellant' / 'Financial Creditor' paid which is also the case of the 'Appellant' that his mother paid a sum of Rs. 7 crore (being the 90% of the value of the said Villa) only after transferring the amount in her own Account which was acknowledged by the 'Respondent' / 'Corporate Debtor'.

5. It appears that the Appellant's mother died on 13th June, 2014 and according to the 'Appellant' his name was recorded in the Books of the 'Respondent' / 'Corporate Debtor', as 'Legal Heir' of Smt. Paramjit Kaur Sawhney.

6. The clear cut stand of the 'Appellant' is that no construction had commenced till date and this fact was ascertained on 28th November, 2016 from the Respondent, as regards the status of Villa etc. Therefore, he was forced to prefer an Application Under Section 7 of the 'I&B' Code read with Rule 4 of the 'I&B' Rules, 2016 seeking to initiate 'Corporate Insolvency Resolution Process' against the 'Respondent' / 'Corporate Debtor'.

7. The Learned Counsel for the 'Appellant' comes out with a plea that the 'Respondent' / 'Corporate Debtor' before the Adjudicating Authority filed a detailed Reply on 25th January, 2019 (to the Section 7 Application filed by the 'Appellant') *repudiating the claim*.

8. The Learned Counsel for the Appellant vehemently contends that the Impugned Order of the Adjudicating Authority ('National Company Law Tribunal') 'Principal Bench, New Delhi dated 17th September, 2019 is a perverse one, besides the same being passed in a mechanical manner.

9. Yet another submission of the Learned Counsel for the Appellant is that the Adjudicating Authority ('National Company Law Tribunal'), 'Principal Bench, New Delhi had failed to consider that after the demise of the Appellant's mother, Appellant's claim was entered in the records of the

Respondent / Company and further that no document was required from other 'Legal Heirs' pertaining to the claim in issue.

10. The Learned Counsel for the Appellant submits that the Adjudicating Authority had wrongly rejected the Application Under Section 7 of the 'I&B' Code when there existed no 'Dispute' between the parties.

11. The Learned Counsel for the Appellant proceeds to point out that the Adjudicating Authority had failed to appreciate that admittedly Rs. 7 crore was lying to the credit of 'Sawhney Builders Pvt. Ltd.' and the same was transferred in Appellant's mother's Account (Mrs. Paramjit Kaur Sawhney) against the purchase of Villa and received by Respondent and in fact a receipt was issued by the Respondent / Corporate Debtor.

12. The Learned Counsel for the Appellant contends that the Adjudicating Authority had failed to appreciate in a proper prospective that the Respondent / Corporate Debtor on the one hand had taken a stand that the Subject Project got cancelled in the year 2011 but on the other hand the Respondent / 'Corporate Debtor' had issued the acknowledgement or receipt of the amount from the mother of the Appellant / 'Financial Creditor' on 21st April, 2014. Besides this, the Respondent / 'Corporate Debtor' had also issued a letter transferring the allotment of Villa in favour of the Appellant / 'Financial Creditor' stating that the construction of the Villa through letter dated 28th November, 2016 which indicates that the allotment of Villa was

never cancelled and the counter-averments made by the Respondent / 'Corporate Debtor' are false.

13. The Pivotal contention advanced by the Learned Counsel for the Appellant is that the Adjudicating Authority had failed to take into account that if a 'Corporate Debtor' commits a default of a 'Financial Debt' then, the Adjudicating Authority is to see that the records of the 'Information Utility' or other evidence produced by the 'Financial Creditor' to satisfy that the 'Default' had occurred.

14. The Learned Counsel for the Appellant submits that the Adjudicating Authority had failed to consider that the acts of the Respondent / 'Corporate Debtor' had caused 'wrongful Gain' to the Respondent Company.

15. Before the Adjudicating Authority, the Respondent / 'Corporate Debtor' had taken a stand that the Villa in question was booked provisionally in the name of Ms. Paramjeet Kaur Sawhney (since Deceased) in the project 'Amara Towne' launched in the year 2006 and that the Respondent Company was issued with the licence on 25th November, 2006, for development of a Housing Scheme - at Village 'Morta Tehsil' and 'District Ghaziabad'.

16. Furthermore, that the detailed Project Report was to be approved from the 'Ghaziabad Development Authority' ('GDA') within a period of two years and that the detailed Project Report which was submitted with the

‘Ghaziabad Development Authority’ (‘GDA’) through covering letter dated 15th September, 2008 was never approved. Therefore, the Licence granted through the letter dated 25th November, 2006 for a period of two years upto 17th November, 2008 was not renewed.

17. On a cursory perusal of the Reply of the Respondent / ‘Corporate Debtor’ shows that Ms. Paramjeet Kaur Sawhney (since Deceased) left behind three ‘Legal Heirs’ namely Shri N.P.S. Sawhney (Husband), Shri Hardeep Singh Sawhney (Son / Appellant / Petitioner) and Ms. Laveena Kharbanda (Daughter).

18. Added further, it is the plea of the Respondent / ‘Corporate Debtor’ that Appellant / Petitioner had approached the Respondent / Company to transfer the booking of Villa in the name of Ms. Paramjeet Kaur Sawhney (since Deceased) which has not submitted any will of Ms. Paramjeet Kaur Sawhney (since Deceased) or any (Registered Relinquishment Deed from his sister) in his favour to the Company. In fact, the father of the Appellant / Petitioner, as well as the Director of the Respondent / Company put pressure to transfer the said booking of Villa in the name of the Appellant.

19. The Respondent / Corporate Debtor in its Reply before the Adjudicating Authority (‘National Company Law Tribunal’) Principal Bench, New Delhi had averred that all the Shareholders and Directors of the Respondent / Company or one family members is known as ‘Sawhney family’ and are close relative to one another.

20. The Appellant / 'Financial Creditor' is the son of one of the Directors of the Company *viz.* Mr. Narender Pal Singh Sawhney and other two Directors or brothers of Mr. Narender Pal Singh Sawhney. Besides this, it is alleged that wives of all three brothers were petitioner in another commercial venture of the Respondent / 'Corporate Debtor' that father of the Appellant / Petitioner Mr. N.P. Singh Sawhney was giving 'Power of Attorney' by all the partners of 'Sawhney Export House', to run the said firm.

21. It is the further case of the Respondent that the sum given as an advance by 'Sawhney Export House' to the Respondent / Company was transferred in the name of wife of Mr. N.P. Singh Sawhney (one of the partners) without securing the consent from other partners. Also that the notice dated 20th January, 2019 was allegedly issued in respect of such transfer and for its appropriation in the partnership 'Firm's Account'.

22. The Respondent / 'Corporate Debtor' had averred in its Reply (before the Adjudicating Authority) that Mr. N.P. Singh Sawhney, one of the Directors, who faced criminal proceedings availed bail (for the bouncing of Cheques by his Company). Viewed in that perspective, it is the stand of the Respondent / Company that Ms. Paramjeet Kaur Sawhney (since Deceased) had not invested in 'Sawhney Builders (P) Ltd.' for the Villa.

23. *Per contra*, the said sum was shown as 'Investment Made' with a view to avoid 'Capital Gain Tax'. The Respondent / 'Corporate Debtor' in its Reply before the Adjudicating Authority had averred that no assurance was

given from the delivery of the Villa in favour of either Ms. Paramjeet Kaur Sawhney (since Deceased) or to and in favour of Appellant / Petitioner by the Respondent / Company, because of the simple reason that no allotment was ever made by the Respondent Company. As such, the Appellant / Petitioner is not a 'Financial Creditor'.

24. The *Pith and substance* of the stand of the Respondent / 'Corporate Debtor' is that, in reality there is no debt much less sum of Rs. seven crores as claimed by the Appellant. That apart, the partnership firm (run by the Appellant's father) from the 'Financial Year' 2007 was crediting advance to 'Sawhney Builders Pvt. Ltd.' and the said advances were regularly made between the two as per Ledger Account of 'Sawhney Export House' with 'Sawhney Builders Pvt. Ltd.'

25. It is also the case of the Respondent that in view of the fact that the husband of Ms. Paramjeet Kaur Sawhney (since Deceased) i.e. Mr. N.P. Singh Sawhney was one of the Directors of the Respondent / Company, he had obtained the receipt dated 21st April, 2014.

26. It must be borne in mind that the Adjudicating Authority while dealing with an application Under Section 7 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) is not required to look into any other aspect for 'Admission' of the Application except that he is satisfied with an act of default and had enquired that the 'Application' was complete and any

disciplinary proceedings were pending against the prospective 'Resolution Professional', which even he shall admit the Application.

27. *To put it succinctly*, if the 'Financial Debtor' is able to establish the existence of 'Debt' and the 'Corporate Debtor' default, an Application was complete in all aspects, then the Application would be admitted. To sustain an Application Under Section 7 of the 'I&B' Code, the Applicant is to establish the existence of a 'Debt', which is due from the 'Corporate Debtor'. Put it in precise term, his existence of undisputed 'Debt' is '*Sine Qua Non*' for triggering the 'Corporate Insolvency Resolution Process'. Always, it is open to the 'Corporate Debtor' or its Directors to point out that the 'Debt' is not payable by the 'Corporate Debtor' in 'Law' and in fact.

28. In the case on hand, not even an Agreement or allotment letter was produced on the side of the Appellant because of the obvious reason that the Project was cancelled as early as in the year 2011.

29. The Appellant had not come out clean in his Application Under Section 7 of the 'I&B' Code because he had not mentioned about the fact that his father is Director and Shareholder of the Respondent Company.

30. As far as the present case is concerned, there exist serious dispute as to whether the Respondent / 'Corporate Debtor' owes any sum to the Petitioner / 'Financial Creditor' and the said dispute cannot be determined in a summary proceedings under the 'Insolvency & Bankruptcy Code' in the considered opinion of this Court.

31. *Suffice it* for this Tribunal to make a pertinent mention that the dispute between the parties requires to be *thrashed out* by adducing necessary documentary and oral evidence before the ‘Competent Forum’. Admittedly, the Adjudicating Authority under the ‘I&B’ Code is not a ‘Court of Law’ and it does not decide money claim or ‘Suit’. In any extent, the Appellant has failed to establish when there is any ‘Debt’ recoverable from the Respondent Company and the occurrence of default.

32. Be that as it may, in the light of detailed qualitative and quantitative discussions and also taking note of attendant facts and circumstances of the instant case in an encircling manner this Tribunal comes to an inevitable and irresistible conclusion that the Impugned Order dated 17th September, 2019 in dismissing the Section 7 Application is free from any legal infirmities. Resultantly the present Appeal *Sans merits* and the same is accordingly dismissed but without Costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)

New Delhi

18th November, 2019

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