

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1517 of 2019

IN THE MATTER OF:

Venus Sugar Ltd.

...Appellant

Vs

SASF

....Respondent

Present:

For Appellant: Dr. U. K. Chaudhary, Sr. Advocate with Ms. Deepti Bharadwaj, Ms. Trishima Gupta and Mr. Dhruv Gupta, Advocates.

For Respondent:

ORDER

07.01.2020: The Respondent – ‘SASF’ filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’), which was taken up by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench. It appears that the matter was taken up on 18th November, 2019 and in absence of the counsel for the Respondent – Financial Creditor, the application under Section 7 was dismissed for non-prosecution. However, before signing of the order by the Adjudicating Authority (The Hon’ble Member), the matter was mentioned later on by Mr. K. K. Tiwari, counsel for the Respondent – Financial Creditor, who apologised for not being present and on his oral prayer the impugned order was passed on the same day i.e. 18th November, 2019 which reads as follows:-

“CP No. (IB) 320/ALD/2019

Sh. N. Raja Singh, Advocate for the respondent is present.

After completion of the Court and before visiting of the Court the learned counsel for the petitioner Sh. K. K. Tiwari appeared and requested for noting his presence and apologised for not being present when the matter was taken up and stated that he was held up in the traffic.

In view of the said mentioned facts put up on 04.12.2019 and the matter as ordered for dismissing for non-prosecution is not being passed.

Learned counsel for the petitioner undertakes to inform the learned counsel for the respondent about the mention and subsequent modification of the order, in writing within 48 hours.”

2. On hearing learned counsel for the Appellant, we are of the view that to maintain rule of natural justice right action was taken by the Hon'ble Member, who before signing the order, ordered to list the matter and inform the Appellant as otherwise it would have incurred more litigation. If the earlier application under Section 7 was dismissed for non-prosecution, it was always open to the Respondent to file fresh application under Section 7.

3. For the said reason while we are not inclined to intervene in the impugned order dated 18th November, 2019, we give liberty to the parties to settle the matter before admission. The order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of the Appellant – Corporate Debtor or the Respondent – Financial Creditor for determination of matter on merit. The appeal stands disposed of with aforesaid observation. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc