

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No. 927 of 2019

IN THE MATTER OF:

Ashish Manik

...Appellant

Versus

SR Marine & Offshore Engineering Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant: Shri S. Ramanathan and Shri Darpan B., Advocates

For Respondent: None

O R D E R

09.09.2019 The Respondent – SR Marine & Offshore Engineering Pvt. Ltd. (Financial Creditor) filed Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (I&B Code – in short) for initiation of corporate insolvency resolution process against M/s. M.N. Horological Industries Pvt. Ltd. The Adjudicating Authority (National company Law Tribunal, Single Bench, Chennai) by Impugned Order dated 23rd July, 2019 admitted the Application. Present Appeal has been preferred by the Director/shareholder of the Corporate Debtor.

Learned Counsel appearing on behalf of the Appellant submitted that promissory notes dated 24th April, 2015, 27th April, 2015 and 5th September, 2015 are void as the same have not been executed by the personnel authorized by the Corporate Debtor in accordance with law. It is further submitted that the

funds transferred by the Respondent – Financial Creditor is unauthorized transaction which could not have been considered as financial debt within the meaning of Section 5(8) of the I&B Code. Therefore, Respondent No.1 cannot be termed to be a Financial Creditor within the meaning of Section 5(7). Learned Counsel for the Appellant submitted that both the promissory notes being void, transaction is not binding on the Corporate Debtor and, therefore, the Application under Section 7 was not maintainable.

It is not in dispute that the first Respondent granted a loan of Rs.25 Lakhs and Rs.5 Lakhs to the Corporate Debtor on 29th July, 2015 and 8th September, 2015 respectively, totalling a sum of Rs.30 Lakhs. Out of the same part payment has been made to the extent of Rs.1,50,000/-. It is submitted that the first Respondent claimed a sum of Rs.41,64,822/- as outstanding amount as on 31st October, 2018 towards principal amount along with interest. The fact as to whether the promissory notes dated 27th April, 2015 and 5th September, 2015 are void or not, is not the question. Such question cannot be determined by the Adjudicating Authority. Promissory notes whether void or not, the fact remains that the Corporate Debtor borrowed a sum of Rs.25 Lakhs on 29th July, 2015 and another sum of Rs.5 Lakhs on 8th September, 2015. Out of the total amount of Rs.30 Lakhs, a sum of Rs.1,50,000/- has been paid. The rest amount has not been paid.

The fact that the Corporate Debtor has borrowed the aforesaid amount which is more than Rs.1 Lakh, we hold that the amount comes within the meaning of financial debt, having been borrowed by the Corporate Debtor and disbursed by the first Respondent for consideration of time value of money and is covered by the I&B Code. For the said reason, we also hold that irrespective of the promissory notes aforesaid, as the amount has been borrowed by the Corporate Debtor, the first Respondent comes within the meaning of Financial Creditor as defined under Section 5(7) of the I&B Code.

It is also not in dispute that the Corporate Debtor has shown the amount as loan borrowed from the Financial Creditor (first Respondent). For the said reason, while we leave it open as to whether promissory notes are void or not, as the fact remains that the Corporate Debtor has borrowed the loan amount and defaulted to pay the amount, we hold that the Application under Section 7 was maintainable and rightly admitted by the Adjudicating Authority. In absence of any merit, the Appeal is dismissed.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/rs/sk