

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 446 of 2018

IN THE MATTER OF:

Wianxx Impex Pvt. Ltd.

...Appellant

Versus

Srei Equipment Finance Ltd.

...Respondent

Present:

For Appellant : **Mr. Muneesh Malhotra, Mr. Rajat Bhardwaj,
Ms. Prerna Chaturvedi, Ms. Manpreet Bhatia,
Advocates**

For 1st Respondent: **Mr. Arijit Mazumdar, Mr. Akshay Chandna and
Mr. Shambo Nandy, Advocates**

O R D E R

10.08.2018 The respondent – ‘Srei Equipment Finance Limited’ filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I&B Code’) for initiation of ‘Corporate Insolvency Resolution Process’ against the appellant – ‘Wianxx Impex Pvt. Ltd. Notice has been issued on the appellant whereinafter the case has not been admitted by the impugned order dated 30th July, 2018. The Adjudicating Authority (National Company Law Tribunal), Principal Bench passed the following order:

“In terms of order dated 11.07.2018 an additional affidavit and the certificate admissible under evidence was required to be filed. Ld. Counsel for the petitioner

states that the same is ready and shall be filed in the registry today itself with a copy in advance to the counsel opposite.

List for arguments on 10.08.2018.

No objections are required to file.”

2. Learned counsel appearing on behalf of the appellant submits that by the last line of the impugned order, the Corporate Debtor has been prohibited from filing any objection which is in violation of the principle of natural justice.

3. Mr. Arijit Mazumdar, learned counsel appearing on behalf of the respondent submitted that an affidavit of compliance was asked by the respondent herein to bring on record certain evidence. For the said reason, it was ordered no objections is required to be filed.

4. While we accept that the appellant cannot raise any objection with regard to the evidence if filed by the respondent (Financial Creditor), but we are of the opinion that before giving hearing to the appellant (Corporate Debtor), Adjudicating Authority should have given an opportunity to file a reply in view of the decision of the Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors., - (2018) 1 SCC 407*". In the said judgment, Hon'ble Supreme Court in paragraph 28 etc., has allowed to the 'Corporate Debtor' to raise the objection.

5. The Adjudicating Authority having failed to notice the aforesaid provision, we set aside the impugned order. If any reply is filed by the appellant within ten days, the Adjudicating Authority will take into consideration the same before passing order of admission or rejection of the application under Section 7 of the

I&B Code. As we have granted ten days' time to the appellant to file reply, we may also grant one week's time to the respondent (Financial Creditor) to file rejoinder.

6. The appeal stands disposed of with the aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc/