

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 277 of 2020

IN THE MATTER OF:

Akshay Arun Shetty

...Appellant

Vs.

Bank of India & Anr.

...Respondents

Present: For Appellant: - Ms. Shraddha Agrawal and Ms. Neela Gokhale, Advocates.

O R D E R

14.02.2020— Learned counsel for the Appellant submits that 'Tara Hospitality Private Limited' ('Corporate Debtor') is covered under 'Micro, Small & Medium Enterprises'. The 'Bank of India'- ('Financial Creditor') moved an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 which has been admitted by impugned order dated 25th November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal) and certified copy thereof has been issued on 30th January, 2020, therefore, there is no delay.

In the meantime, the Appellant tried to reach settlement with the 'Bank of India' who has already received and adjusted a sum of Rs.80,00,000/-, but is not reaching any settlement.

It is submitted that the aforesaid action on the part of the 'Financial Creditor' (Bank of India) to accept money during the 'Corporate Insolvency Resolution Process', which otherwise not permissible, on the ground that it wants settlement and then refusing to settle. The application under Section 7 was in fact filed by the Bank of India with

Contd/-.....

malicious intent and not for resolution or liquidation and calls for penal action under Section 65 of the 'I&B Code'.

Let notice be issued on Respondents by speed post. Requisite alongwith process fee, if not filed, be filed by 17th February, 2020. If the Appellant provides the e-mail address of Respondents, let notice be also issued through e-mail.

Post the case 'for orders' on 12th March, 2020. The appeal may be disposed of on the next date.

In the meantime, the 'Interim Resolution Professional' will not constitute the 'Committee of Creditors', if not yet constituted, to enable the parties to reach settlement. The Bank of India once accepted the amount is expected to reach settlement, failing which the question, whether application under Section 7 was filed under malicious intent for recovery and not for resolution will be considered. However, the 'Interim Resolution Professional' will ensure that the company remains a going concern and will take assistance of the (suspended) Board of Directors and the officers/ Directors/employees. The person who is authorised to sign the bank cheques may issue cheques but only after approval of the 'Interim Resolution Professional'. The Bank Account of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of Current Bills of the suppliers, salaries and wages of the Employees'/workmen, Electricity Bills etc.

(Justice S.J. Mukhopadhaya)
Chairperson

(Alok Srivastava)
Member(Technical)

Ar/g