

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) (INSOLVENCY) NO.126 OF 2018

IN THE MATTER OF:

Mr Rajnish Gupta

Appellant

Vs

Small Industrial Development Bank of India

Respondent

Present: For Appellant:- Mr. K. Datta, Mr. Astuosh Gupta, Mr. Gaurav Rana, Mr. A. Uppal, Mr. Suraj Shukla, Advocates.

For Respondents: - Mr. Rajendra Beniwal, Advocate.

O R D E R

09.04.2018 - The appeal has been preferred by Mr Rajnish Gupta, shareholder of the M/s Delicious Coco Water Pvt Ltd (corporate debtor) against the order dated 6th March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, New Delhi whereby and whereunder an application preferred by respondent, Small Industrial Development Bank of India (financial creditor) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the I&B Code) has been admitted.

Learned counsel appearing on behalf of appellant submitted that the Deputy General Manager of the financial creditor was not authorised to file the application under Section 7 of the I&B Code. However, such submission cannot be accepted in view of the decision passed by this Appellate Tribunal in the matter of ***Palogix Infrastructure Pvt Ltd Vs ICICI Bank Ltd, Company Appeal (AT) Insolvency No.30 of 2017*** wherein this Appellate Tribunal observed and held as follows:

“37. As per Entry 5 & 6 (Para I) of Form No.1 ‘Authorised Representative’ is required to write his name and address and position in relation to the ‘Financial Creditor/Bank’. If there is any defect, in such case, an application under Section 7 cannot be rejected and the applicant is to be granted seven

days' time to produce the Board Resolution and remove the defect.

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39. If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under Section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate."

Admittedly the agreement executed by the corporate debtor clearly provides for recall of the loan amount in case the repayment schedule is not adhered to. The said outstanding was duly recalled vide a notice in writing. The objections that the petition was not duly signed by the duly authorised officer (Deputy General Manager) is not sustainable in view of the Regulation 10 read with Regulation 11 of the SIDBI General Regulations whereby officer of the rank of Deputy General Manager has been authorised to issue proceedings before the Adjudicating Authority which has been noticed by the Adjudicating Authority.

Learned counsel appearing on behalf of the appellant next contended that the Form 2 whereby permission of the Interim Resolution Professional was obtained was incomplete but that cannot be a ground to reject the application under Section 7, if Form 1, which is the application under Section 7 is complete.

Having heard the learned counsel for the parties and taking into consideration the fact the application under Section 7 was complete, we find no ground to interfere in the impugned order. The appeal is accordingly dismissed. However, in view of the facts and circumstances there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)