

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Company Appeal (AT) (Insolvency) No. 64 of 2019****IN THE MATTER OF:****Gautam Shaw****...Appellant****Vs.****Indiabulls Housing Finance Ltd. & Anr.****...Respondents****Present: For Appellant: - Mr. Nitin Sangra, Advocate.****For Respondents:- Mr. Sumesh Dhawan, Ms. Vatsala Kak
and Ms. Geetika Sharma, Advocates.****ORDER**

21.01.2019— This appeal has been preferred by Mr. Gautam Shaw, Director/shareholder of 'Utkram Chemicals Pvt. Ltd.'- ('Corporate Debtor') against the order dated 4th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in Company Petition (IB) No. 454/KB/2018, whereby and whereunder, the application preferred by Respondent- 'Indiabulls Housing Finance Limited'- ('Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed with directions as mentioned therein.

2. Learned counsel appearing on behalf of the Appellant submits that the Appellant could not get proper opportunity as the Lawyer Mr. D Joy Das was earlier appeared on behalf of the 'Corporate Debtor', failed to appear on subsequent dates. However, on such ground, the impugned order dated 4th December, 2018 cannot be set aside in absence of any infirmity.

3. From the record, we find that the 'Corporate Debtor' was allowed to file affidavit in reply to the application. But, in spite of repeated adjournments and opportunities granted by the Adjudicating Authority, the 'Corporate Debtor' failed to file affidavit in reply. The counsel for the Appellant initially appeared, but for the reason known to the 'Corporate Debtor', no one appeared on behalf of the 'Corporate Debtor' on subsequent fixed dates.

4. Learned counsel appearing on behalf of the Appellant submits that subsequently on 26th December, 2018, the Appellant has settled the claim with the 1st Respondent- 'Indiabulls Housing Finance Limited'. However, subsequent settlement between the parties cannot be a ground to set aside the order of admission there being a debt and default on the date of admission.

5. In this background, while no relief can be granted to the Appellant or to the 'Corporate Debtor', we condone the delay of 11 days in preferring the appeal and allow I.A. No. 140 of 2019. Further, we make it clear that

the order passed in this appeal will not come in the way of the Appellant or any person to move before the 'Committee of Creditors', after taking care of all the creditors, to file application under Section 12 A of the 'I&B Code'.

The appeal stands disposed of with aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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