NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 296 of 2017

IN THE MATTER OF:

Anant Kajare **...Appellant**

Vs.

Eknath Aher & Anr. **...Respondents**

Present: **For Appellant: - Mr. Sanjiv Sen, Senior Advocate with Mr. Rahul Gaikwad, Mr. Ajay Kumar and Mr. Kapil Joshi, Advocates.**

O R D E R

30.11.2017- The Appellant, who claims to be Investor of "M/s. Royal Twinkle Star Club Limited", a Company incorporated under the Companies Act, 1956 and 2013, filed intervention Petition before the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai in CP No. 895/I&BC/NCLT/MB/MAH/2017 alleging initiation of 'Corporate Insolvency Resolution Process' against 'M/s. Royal Twinkle Star Club Limited' as nullity, the initiation under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') having made fraudulently by the 'Operational Creditor' in collusion with the Directors. Before the Adjudicating Authority prayer was made to recall the order dated 2nd May, 2017 passed by the Adjudicating Authority admitting the application under Section 9 of the

'I&B Code' with further request to dismiss the said Petition (CP. No. 895/I&BC/NCLT/MB/MAH/2017).

2. The Adjudicating Authority having noticed all the relevant facts and submissions made on behalf of the Appellant, rejected the prayer by impugned order dated 3rd October, 2017 on the ground that the Adjudicating Authority has no power to recall the order dated 2nd May, 2017 or to dismiss the Company Petition after admission of the application under Section 9 of the 'I&B Code' for initiation of 'Corporate Insolvency Resolution Process'. The impugned order dated 3rd October, 2017 is under challenge in the present appeal.

3. Learned senior counsel appearing on behalf of the Appellant submitted that the Company Petition under Section 9 of the 'I&B Code' preferred by the 'Operational Creditor' was filed fraudulently in connivance with the Directors and due to the same, by consent order 'Corporate Insolvency Resolution Process' was initiated on 2nd May, 2017. According to him, the 'Operational Creditor' is also liable to be punished under Section 65 of the 'I&B Code' for not bringing relevant facts to the notice of the Adjudicating Authority that the Respondent- 'M/s. Royal Twinkle Star Club Limited' is not a 'Corporate Debtor' and no Petition under Section 9 of the 'I&B Code' is thus maintainable. It is also submitted that the order passed by SEBI, as modified by Securities

Appellate Tribunal (SAT) which was also upheld by the Hon'ble Supreme Court by judgment dated 9th November, 2016 in Civil Appeal No. 6590-91/2016 were not brought to the notice of the Adjudicating Authority.

4. Heard learned counsel for the Appellant. Admittedly, the Appellant is an Investor therefore, the Appellant cannot claim to be an 'aggrieved person' for preferring appeal against the order dated 2nd May, 2017 passed by Adjudicating Authority whereby the application under Section 9 of the 'I&B Code' was admitted. In fact, the Appellant being an investor is entitled to file its claim before the 'Insolvency Resolution Professional.

5. Further, as the order dated 2nd May, 2017 is not under challenge in this appeal this Appellate Tribunal cannot express any opinion with regard to the order of admission dated 2nd May, 2017. If the said order dated 2nd May, 2017 is allowed to be challenged, the appeal will be barred by limitation under sub-section (2) of Section 61 of the 'I&B Code'.

6. In absence of any power of review or recall vested with the Adjudicating Authority, we hold that the Adjudicating Authority rightly refused to recall the order of admission dated 2nd May, 2017.

7. For the reasons aforesaid, no relief can be granted. In absence of

any merit the appeal is dismissed. However, the impugned order dated 3rd October, 2017 passed by the Adjudicating Authority, Mumbai and the order of this Adjudicating Authority will not come in the way of Appellant Investor to file its claim before the 'Insolvency Resolution Professional.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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