

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 120 of 2018

IN THE MATTER OF:

Gaurav Bhargava & Ors.

...Appellants

Vs.

Noble Cooperative Bank Ltd.

...Respondent

Present: For Appellant: - Mr. Hrishikesh Baruah with Ms. Rahika Gupta, Advocates

For Respondents:- Mr. Naveen Sharma with Ms. Swati B. Sharma, Advocate

ORDER

17.07.2018— The Respondent M/s Noble Cooperative Bank Ltd.- ('financial creditor') filed an application under Section 7 for initiation of corporate insolvency resolution process against M/s Shivalika Developers Pvt. Ltd. (Corporate Debtor). The case was admitted, order of moratorium was passed and Resolution Professional has been appointed with certain directions.

2. The appellants, shareholders of the Corporate Debtor has challenged the order of admission dated 12th February 2018.

3. The case of the appellants is that the 'Corporate Debtor' was allotted a plot in Sector 63, NOIDA on 9th June 2016 for development. It sought for grant of loan from the respondent bank on 31st March 2009. The credit facility in terms of OD limit was for Rs. 30 Lakhs and a General Term Loan Agreement was taken on 31st March 2009. As per sanctioned order, the

Corporate Debtor was required to purchase shares in the Respondent Co-operative Bank for a sum of Rs. 30,000/- and one Mr. Mahim Mittal and the Guarantor Ms. Ranjeeta Mittal were also required to purchase certain shares. The management of the company (Corporate Debtor) changed subsequently on 16th October 2009.

4. Further case of the appellants is that the erstwhile Directors namely Mr. Asit Mittal and Mr. Mahim Mittal, actually took loan, and therefore they resigned from the company. Even after that resignation they dealt with the bank accounts of the Corporate Debtor. Therefore, according to appellants whatever the loan was taken subsequently were so taken by Mr. Asit Mittal and Mr. Mahim Mittal. Therefore, the 'Corporate Debtor', cannot be treated to have taken loan.

5. It is further submitted that no notice was served on 'Corporate Debtor' before admission of the application under Section 7.

6. It is not in dispute that loan was obtained from the bank (financial creditor) on behalf of the 'Corporate Debtor'. Therefore, the ground taken by the appellants that the loans were taken by Mr. Asit Mittal and Mr. Mahim Mittal as their personal loan cannot be accepted. It is also not in dispute that the loan account was maintained in the name of Corporate Debtor in which the amount was credited. For the said reason, we hold that the application under Section 7 against the Corporate Debtor was maintainable.

7. Even if we presume that no notice was served on secured Corporate Debtor before admission of the application under Section 7, as the remand of the case will be a mere formality because even after remand the

application is to be admitted, we are not interfering with the impugned order.

There being no merit, the appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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