

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT)(Insolvency) No. 407 of 2018

IN THE MATTER OF:

Rahul Aneja **...Appellant**
(Shareholder of J.D. Aneja Edibles Pvt. Ltd.)

Vs

Sushant Aneja & Anr. **...Respondents**

Present:

For Appellant: Mr. Sanjiv Dar and Mrs. Deepa Kulkarni, Advocates

For Respondents: Mr. Bharat Arora, Advocates

ORDER

07.09.2018 This appeal has been preferred by Mr. Rahul Aneja, shareholder of J.D. Aneja Edibles Pvt. Ltd. ('Corporate Debtor') against order dated 4th June, 2018 passed by Adjudicating Authority (National Company Law Tribunal) New Delhi Branch in C.P. No. IB-571/(ND)/2017 whereby the application under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') filed by Respondent Sushant Aneja and Naresh Kumar Aneja (HUF) has been admitted.

Learned Counsel appearing on behalf of Appellant submitted that Mr. Sushant Aneja and Mr. Naresh Kumar Aneja(HUF) are members of the family as also shareholder of J.D. Aneja Edibles Pvt. Ltd. ('Corporate Debtor'). The application under Section 7 of I&B Code was not maintainable in absence of disbursement of amount for consideration of time value of money. It is submitted that the consideration amount was originally given by Respondents for purchase

of shares which cannot be treated to be loan or borrowing any amount by the Company for its business.

Learned Counsel appearing on behalf of the contesting Respondents ('Financial Creditor') submitted that though they were shareholders but the amount disbursed to the 'Corporate Debtor' was towards consideration of time value of money. Learned Counsel for Respondents placed reliance on the balance sheet as on 31.03.2017 of 'M/s. J.D. Aneja Edibles Pvt. Ltd.' which was filed before the Adjudicating Authority, wherein against the head "Unsecured Loans" the names of Naresh Kumar Aneja (HUF) and Sushant Aneja have been shown as 'Unsecured Creditors'. It is shown therein that Nareskh Kumar Aneja (HUF) has been given loan amount of Rs. 27,66,941.00 and Mr. Suresh Aneja has been given loan amount of Rs. 28,05,245.00.

Learned Counsel for the Respondents also relied on the – ITR-V form issued by Income Tax Department which is the Return Verification Form which shows that the Company ('Corporate Debtor') deducted TDS amount towards out of the interest payable to Respondents for the Assessment Year 2013-14.

Having heard learned Counsel for the parties, we are of the view that the Respondents have disbursed the amount which amounts to consideration against time value of money. It comes within the meaning of Section 5(8)(a) of I&B Code, that is money borrowed by company for its business. In view of the above fact we hold that the Respondents being the 'Financial Creditor', the Adjudicating

Authority has rightly admitted the application under Section 7 of I&B Code. We find no merit in the appeal. It is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Akc/Sk