

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.625 of 2019

[Arising out of Order dated 16.05.2019 passed by National Company Law Tribunal, New Delhi Bench – III in C.P. No. IB-189/(ND)/2019]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Prayag Polytech Private
Limited
Through Mr. Milan
Aggarwal,
Director
C-587,
Industrial Area,
Phase – 1,
Bhiwadi – 301 019,
Rajasthan, India

Applicant

Appellant

Versus

Iworld Digital Solution
Private Limited
79, First Floor,
Paschimi Marg,
Vasant Vihar,
New Delhi 110 057

Respondent

Respondent

For Appellant:

Shri Vipul Ganda, Ms. Shreya Jain, Shri Amar Choudhary and Ms. Alexandra Celestine, Advocates

For Respondent:

Shri Nikhil Kohli, Shri Anupam Singh, Shri Sushmit Mishra and Mrs. Ritika Kohli, Advocates

O R D E R

03.03.2020 Heard Counsel for the Appellant and Respondent. This Appeal has been filed by the Financial Creditor who had moved the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench – III) in C.P. No. IB-189/(ND)/2019 and the Application of the Appellant under

Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) came to be rejected. The Appellant – Financial Creditor has moved this Appeal against dismissal of the said Application against the Respondent – Corporate Debtor.

2. The Appellant claims that the Appellant had provided loan amounts to the Corporate Debtor from time to time by way of an oral Agreement. The amounts were disbursed in between 20th August, 2015 to 1st March, 2016 and the dues outstanding were of Rs.3,51,00,000/-. It is the case of the Appellant that the amounts transferred to the Corporate Debtor were reflected in the bank accounts and the Corporate Debtor has paid interest and TDS was also deducted. Counsel states that there were dues and consequently, the Appellant sent Notice on 2nd January, 2019 (Page – 107) recalling the loan of Rs.3,51,00,000/- along with interest of Rs.1,85,12,378/-. It is the case that Respondent instead of clearing the dues of the Appellant, sent a Notice (Page – 138) dated 18th January, 2019 claiming that there were dues with regard to a loan Agreement dated 19th December, 2014 (Page – 170) and there was also an MOU (Memorandum of Understanding) dated 3rd April, 2017 (Page -175). The Corporate Debtor relying on such documents claimed that the matter is being referred to the Arbitrator.

3. Learned Counsel for the Appellant states that these documents were fabricated documents as one of the Managing Directors who had entered into these documents namely, Mr. Devendra Kumar Aggarwal had disputes with the other Managing Director – Mr. Ravindra Kumar Aggarwal who is his brother and the disputes had started in 2017 and proceedings under the Companies Act were pending between them since 2018. The learned Counsel

for the Appellant is claiming that actions of such Director - Mr. Devender Kumar Aggarwal were not binding on the Financial Creditor.

4. It is also claimed that the Impugned Order in Para – 3 of the Judgement (Page – 25 at Page – 34) rejected the Application on surmise that there could be a breach of Clause 1.3 of the MOU and there is possibility of forfeiture. Counsel states that the loan Agreement dated 19th December, 2014 did not specify any amount and the subsequent MOU dated 3rd April, 2017 stated that there were dues of Rs.4,31,97,115/- which was outstanding amounts against the unsecured loan of the Company and this MOU purported to be Agreement between the parties whereby the lender was treated as Investor for CCD (Compulsory Convertible Debentures) adding provision that the Appellant would further invest to the extent of Rs.3,25,00,000/- within a period of 18 months effective 1st April, 2017 which was treated as interest free period and in default, there was provision for the Respondent to forfeit the amount. The learned Counsel states that such document was unconscionable and the Respondent could not rely on the same.

5. The Counsel for Appellant has further submitted that before the Adjudicating Authority in the Reply, a reference was made by the Respondent that it has a right to forfeit under the MOU. Counsel states that the amount was not actually forfeited and thus, the Adjudicating Authority observed in the Impugned Order regarding existence of such right.

6. The learned Counsel for the Respondent refers to the Reply filed before the Adjudicating Authority (Page – 152 at 164) to submit that the Respondent

had even before Adjudicating Authority claimed that it has forfeited the amount in terms of Para – 1.4 of the MOU dated 3rd April, 2017. Counsel states that the Respondent has moved the Arbitrator because of the provision of right to move the Arbitrator under the Agreement read with the MOU as the Respondent has suffered losses due to the non-investment promised by the Appellant and the Respondent has to recover monies from the Appellant.

7. Going through the material on record and the submissions made, we are not much impressed by the claim of the Appellant that in an oral arrangement such huge amounts were lent to the Respondent. The Learned Counsel for the Respondent is rightly raising questions and surprise to say that a Company like the Appellant could not have lent such huge amounts without there being any document in the form of Resolution; or any Agreement; or without taking security. In the circumstances, we are not ready to discard the loan Agreement pointed out by the Respondent and the MOU only because the Appellant now turns around to brand one of its Directors as not good Director with whom the other Director, his brother subsequently claims to have developed disputes. Calling a document as forged is not enough to throw out the document unless there is, prima facie, evidence to show that the document is a false creation by the opposite party.

8. The record shows that when the Appellant sent the recall Notice, the Respondent immediately by way of another Notice which is at Page – 138 referred to the documents executed between the parties and claimed that for want of the investment, it had suffered damages. In the Reply before the Adjudicating Authority, the forfeiture was also claimed. We are not entering

into the dispute relating to these documents which are stated to be before the Arbitrator. What we hold from the record is that the Appellant – Financial Creditor fails to make out case that there is debt which is admitted and enforceable and that it is in default.

9. In this view of the matter, we do not find any reason to interfere with the Impugned Order.

10. The observations made by us in this Judgement will not come in the way of the rights of the parties to pursue their claims before the Arbitrator or before any other Forum considering the summary nature of proceedings under Sections 7 of IBC and the limited sphere in which such matters are dealt with. The Arbitrator/Forum can deal with the Rights claimed uninfluenced by our observations.

11. The Appeal is dismissed. No Orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md