

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 487 of 2020

IN THE MATTER OF:

Sunil Sanghavi

...Appellant

Vs.

State Bank of India

...Respondent

Present: For Appellant: - Mr. Osama Suhail and Mr. Bhanti Tyagi, Advocates.

O R D E R

22.05.2020— Appellant, claiming to be a shareholder of the ‘Corporate Debtor’ – ‘Ess Dee Aluminium Limited’ has preferred the instant appeal against order of admission of application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) filed by the ‘Financial Creditor’- ‘State Bank of India’ in terms of impugned order dated 14.02.2020 amended by virtue of order dated 19.02.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata.

2. The ‘Financial Creditor’ claimed that it had extended cash credit facility and disbursed term loan of Rs.21.89 Cr. to the ‘Corporate Debtor’ in the year 2005 with the credit facility being increased from time to time and repayment schedule being extended lastly on 24.09.2015. It reached the figure of Rs.424.80 Cr. Since the ‘Corporate

Debtor' defaulted in payment, the loan account was declared NPA. The 'Corporate Debtor' acknowledged its liability to pay the financial debt on 31.03.2017 but did not pay. Proceedings have been filed before the Debt Recovery Tribunal, Kolkata pursuant to notice served under Section 13(2) of the SARFAESI Act, 2002. The 'Financial Creditor' sought initiation of 'Corporate Insolvency Resolution Process' on the ground of default on the part of 'Corporate Debtor' to pay the financial debt. On being satisfied that the financial debt was due and payable and default has been committed by the 'Corporate Debtor', the Adjudicating Authority proceeded to pass the impugned order admitting the application under Section 7 of the 'I&B Code' with consequential orders of appointment of 'Interim Resolution Professional' and slapping of Moratorium on the assets of the 'Corporate Debtor' which has been assailed in the instant appeal.

3. Heard learned counsel for the Appellant. It is submitted that the Adjudicating Authority passed the impugned order without affording the 'Corporate Debtor' an opportunity of settling the accounts with the 'Financial Creditor'. It is further submitted that the 'Corporate Debtor' was undergoing negotiation talks with the 'Financial Creditor' and in view of the same, it did not feel the necessity of filing reply to the application. It is also submitted that the settlement plea was made time and again before the Adjudicating Authority but the same was not recorded. Instead the Adjudicating Authority directed that the matter be

preceded *ex parte* and the impugned order thus came to be passed violating principles of natural justice.

4. After hearing learned counsel for the Appellant and wading through the record, we find that ample and reasonable opportunity was provided by the Adjudicating Authority to the 'Corporate Debtor' for filing its reply but the 'Corporate Debtor', after putting in its appearance in compliance to the notice served by the Adjudicating Authority, did not file affidavit in reply thereby leaving the application of 'Financial Creditor' to proceed uncontested. This factual position emerges from the copies of minutes of proceedings recorded by the Adjudicating Authority on 01.10.2019, 28.11.2019, 02.12.2019, 10.12.2019 and 03.01.2020 respectively forming Page Nos.37, 40, 43, 46 & 49 of the appeal paper book. It emerges from these interim orders that ample opportunity was provided to the 'Corporate Debtor' to file reply-affidavit and since the 'Corporate Debtor' did not comply with the orders in regard to filing of affidavit in reply, the application was directed to be heard in *ex parte* against the 'Corporate Debtor'. It further appears from order dated 03.02.2020 at Page No.52 of the appeal paper book that on that day the Adjudicating Authority heard learned counsel for both the parties notwithstanding the fact that the 'Corporate Debtor' had not filed its affidavit in reply and the matter was reserved for orders. The sequence of events unfolded by the judicial record demonstrates non-compliance on the part of 'Corporate Debtor' qua direction for filing affidavit in reply. It also does not record any proposal for settlement or

restructuring of loan emanating from the 'Corporate Debtor' as sought to be projected by the Appellant at the hearing today. The record stares in the face of the Appellant and belies the ground projected in appeal that Rules of Natural Justice were not observed. It is not the Appellant's case that the 'Corporate Debtor' had settled the issues with the 'Financial Creditor' and the terms of settlement were reduced to writing and filed before the Adjudicating Authority. That not being the case of Appellant, it is repugnant to common sense that pursuant to notice under Section 13(2) of the SARFAESI Act, 2002 proceedings having been filed before the DRT, Kolkata and triggering of 'Corporate Insolvency Resolution Process' by the 'Financial Creditor', it would have proposed a settlement with the 'Corporate Debtor' as sought to be projected in this appeal. The plea raised by the Appellant defies logic and deserves to be rejected.

We find no merit in this appeal. It is accordingly dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[V.P. Singh]
Member(Technical)

[Shreesha Merla]
Member(Technical)

Ar/nn