

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 911 of 2019

IN THE MATTER OF:

Mr. Sarvesh Tiwari

.....Appellant

Vs.

Asset Reconstruction Company (India) Ltd. & Ors.

.....Respondents

Present :

For Appellant:

Mr. Raktim Gogoi, Mr. Sarvaswa Chhajer, Mr. Kartikeya Singh, Mr. Shashank Singh, Mr. Vikas Kumar, Advocates

For Respondents:

Mr. Bishwajit Dubey, Ms. Ruchi Choudhary, Advocates

O R D E R

04.09.2019 - Having heard learned counsel for the Appellant and being satisfied with the ground, delay of refiling the appeal is hereby condoned. I.A. No. 2712 of 2019 stands disposed of.

The Appellant and employee of 'Neesa Leisure Limited' ('Corporate Debtor') during 'Corporate Insolvency Resolution Process', filed an application before the Adjudicating Authority ('National Company Law Tribunal') Ahmedabad Bench, Ahmedabad u/s 65 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) on the ground that the 'Corporate Insolvency Resolution Process' has been initiated with fraudulently and malicious intention for any purpose other than the Resolution of the Insolvency.

....contd.

The Adjudicating Authority by impugned order dated 26th April, 2019 having rejected the application the present appeal is preferred.

We have heard the learned counsel for the Appellant and perused the record.

Section 65 of the 'I&B' Code reads as follows:-

65. *(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

In the present case, none of the Director or the shareholder of the 'Corporate Debtor' has alleged that the 'Corporate Insolvency Resolution Process was initiated by 'Asset Reconstruction Company (India) Ltd.' ('Financial Creditor')

....contd.

with fraudulently and malicious intention for any purpose other than the Resolution of the Insolvency. There is nothing on record to support the claim of Appellant.

For the reason aforesaid, we are not inclined to interfere with the impugned order, the appeal is accordingly dismissed.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/sk

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