

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 636 of 2018

IN THE MATTER OF:

**Abhijit Deshmukh,
Ex-Director of Maharashtra
Shetkari Sugar Ltd.**

...Appellant

Versus

Rajendra K. Bhutta, R.P. & Anr.

...Respondents

Present:

For Appellant : **Ms. Vivya Nagpal and Mr. Umesh Pratap Singh,
Advocates**

For 1st Respondent: **Ms. Avika Madhura and Mr. Ashish Verma,
Advocates**

O R D E R

24.10.2018 This appeal has been preferred by Mr. Abhijit Deshmukh, Director of Maharashtra Shetkari Sugar Ltd. (Corporate Debtor) against order dated 30th August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai whereby the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 filed by the Union Bank of India (Financial Creditor) has been admitted, order of moratorium has been passed and the Interim Resolution Professional has been appointed with certain directions.

Learned counsel appearing on behalf of the appellant submits that in fact there was a 'default' on the part of the 'financial creditor' who had paid the amount in the year 2011 though it was applied in the year 2009. It is alleged

that the stand taken by the Bank that the Composite Deed of Mortgage and Hypothecation Deed dated 12th January, 2011 and modified on 12th June, 2012 are not based on the record but are forged documents. However, it is accepted that the said date modified is 18th October, 2012.

2. Learned counsel appearing on behalf of the appellant further submits that the Bank originally agreed for modification of terms and conditions of repayment and in spite of repeated requests they wrongly appropriated the same towards payment about repayment of the amount in terms of the oral agreement on the basis of written requests made. In fact there is a 'default' on the part of the bank which had not passed appropriate order of modification of the schedule of payment and if such modification would have been made, then there would have been no default on the part of the 'corporate debtor'.

3. We have heard Ms. Vivya Nagpal, learned counsel appearing on behalf of the appellant and Ms. Avika Madhura, learned counsel appearing on behalf of the 'Resolution Professional' and perused the record. It is not in dispute that the matter was earlier taken by the Bank under the provisions of SARFAESI Act and the Debt Recovery Tribunal at Aurangabad who passed order on 5th July, 2017. By the said order, the claim of the 'financial creditor' amount of Rs.119,02,11,690/- with further interest therein @ 12.5% per annum were passed. The ground taken by the appellant is that the said was an *ex parte* order and cannot be decided in a petition by Adjudicating Authority while entertaining the application under Section 7 of the I&B Code. It is also not in dispute that the 'corporate debtor' was classified as 'non-performing asset' (NPA) on 24th March, 2015 as per guidelines of the Reserve Bank of India and demanding a sum of Rs.99,92,81,341/- plus applicable interest from April, 2015. How that

amount has been calculated is not the question. It is not in dispute that there is a 'debt' due to the 'financial creditor' from the 'corporate debtor', which is more than Rupees One Lakh and there is 'default' on the part of the 'corporate debtor' in payment. The application being complete, the Adjudicating Authority had no other option but to admit the application. In this background we find no ground to interfere with the order. The appeal is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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