

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No.262 of 2019

IN THE MATTER OF:

Nanubhai Nichhbhai Desai

.....Appellant

Vs.

M/s.Omkara Assets Reconstruction Pvt. Ltd. & Anr.

.....Respondents

Present :

**For Respondents: Ms. Pratiksha Sharma with Mr. Ankit Acharya,
Advocates**

O R D E R

15.04.2019 – The Respondent M/s. Omkara Assets Reconstruction Pvt. Ltd. filed an application u/s 7 of the Insolvency & Bankruptcy Code [‘I&B’ Code], 2016 against M/s. Anoushka Hospital Consultancy and Management Services Pvt. Ltd. (‘Corporate Debtor’) which having admitted by impugned order dated 15.01.2019 the Appellant, shareholder of the ‘Corporate Debtor’ has challenged the order passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench.

Learned Counsel for the Appellant submits that there was a dispute which was referred to Arbitration and Consent Award was passed on 12.08.2016 and the execution case is pending. The Respondent – ‘Financial Creditor’ in the meantime has moved the Adjudicating Authority. It is submitted that in view of pendency of execution case, there is no default as per consented award; and, therefore, the application u/s 7 was not maintainable.

Referring to Clause – 11 of the Award, it is submitted that in case of default of payment, the Respondent can sell the property of the ‘Corporate Debtor’, therefore, instead of filing application u/s 7 of the Insolvency & Bankruptcy Code (‘I&B’)Code, 2016 it was open to the Respondent to sell the property and to recover the amount.

However, such submission cannot be accepted as admittedly, the ‘Corporate Debtor’ committed default on 30.11.2016 in not making payment to the extent of Rs. 17,81,54,000/- including interest as per amount. For the said reason, we are not inclined to interfere in the impugned order. In absence of any merit, the appeal is dismissed. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/sk