

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO. 410 OF 2018

[Arising out of the order passed by the National Company Law Tribunal, Principal Bench, New Delhi on 13.06.2018 in (IB)-160(PB)/2018]

IN THE MATTER OF:

Ranjit Kapoor
Member of Suspended Board
of Directors of
White Metals Limited,
9009 D.B. Gupta Road,
Paharganj, New Delhi – 110055.

....Appellant

Vs.

Asset Reconstruction Company (India) Limited
The Ruby, 10th Floor 29,
Senapati Bapat Marg,
Dadar (W), Mumbai-400028.

....Respondent

Present:

For Appellant:

Mr. Vivek Tankha, Senior Advocate assisted
by Mr. Mayank Bughani, Mr. Prashant
Sivarajan, Mr. Naveen Chawla, Advocates.

For Respondent:

Mr. Arun Kathpalia, Senior Advocate
assisted by Mr. Uddyam Mukherjee,
Mr. Siddharth Nath, Mr. Ankit Jain and Mr.
Krishnayan Sen, Advocates.

ORDER

30.10.2018: The Appellant challenged the order dated 13th June, 2018, whereby an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') preferred by Respondent – Asset Reconstruction Company (India) Ltd. has been admitted and Corporate Insolvency Resolution Process initiated against M/s White Metals Limited (Corporate Debtor).

2. Learned Senior Counsel appearing on behalf of the Appellant submitted that two Assignments were made in favour of the Asset

Reconstruction Company (India) Limited, which were not in accordance with law and, therefore, the Respondent cannot be treated to be an Assignee. He relied on Assignment Agreement dated 21st July, 2014 filed by the Financial Creditor before the Debt Recovery Tribunal in O.A. No.08 of 2014 and Assignment Agreement dated 17th April, 2015 filed by Respondent before the Adjudicating Authority (National Company Law Tribunal, Delhi). The main argument advanced is that the two Assignments are of two different dates, which were produced before the authorities and, therefore, there is doubt about the Assignment made in favour of the Respondent.

3. It is further submitted that the account of the Corporate Debtor never become NPA, therefore, the application under Section 7 of the Code was not maintainable.

4. We have heard the learned Counsel appearing on behalf of the parties and perused the records.

5. We find that there are two Assignment Agreements, one dated 21st July, 2014 and the other dated 17th April, 2015 executed in favour of the Respondent. For initiation of Corporate Insolvency Resolution Process, the Respondent – Financial Creditor relied on the Assignment Agreement dated 17th April, 2015. The Corporate Debtor has not disputed the fact that there is a debt due in law and fact and they defaulted in paying the dues. It is not the case of the Corporate Debtor that there is no debt in law or in fact.

6. The question whether the Assignment Agreement dated 17th April, 2015 is genuine or not cannot be looked into by the Adjudicating Authority while deciding the application under Section 7 or by this Appellate Tribunal, till the Corporate Debtor alleges the same and raise the objection under Section 65 of the Code. No such plea has been taken by the Corporate Debtor before the Adjudicating Authority alleging fraud on the part of the Financial Creditor for initiation of proceedings under Section 65 of the Code. Therefore, this Appellate Tribunal cannot look into such question of fraud.

7. Further, the provision of NPA relates to SARFAESI Act, 2002 and has nothing to do with Code.

8. We find no merit in this appeal. The appeal is accordingly dismissed. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)