

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Company Appeal (AT) (Insolvency) No. 346 of 2020****IN THE MATTER OF:****Gyanchand Mutha****...Appellant****Versus****M/S Aditya Birla Money Ltd. & Anr.****...Respondents****For Appellant: Ms. Susshil Daga, Advocate****For Respondent: Ms. Vanita Bhargava and Ms. Wamika Trehan, Advocates****ORDER**

28.02.2020 Heard Learned Counsel for the Appellant. It is stated that the Appellant is NBFC which is exempted from the purview of "Corporate Person" under Section 3 (7) of the Insolvency and Bankruptcy Code, 2016. Learned Counsel states that this was brought to the notice of the Adjudicating Authority. The Certificate of the Registration is at Page 349. Learned Counsel states that the Adjudicating Authority raised question whether the Appellant is still functioning as NBFC and order dated 23rd October, 2019 (Page 334) was passed. Learned Counsel states in response, the Appellant brought letter from Reserve Bank of India (Page 335) to show that the Company had filed returns till date. It is stated that the Adjudicating Authority noticed these facts in Para 28 of the Impugned Order but still went ahead to analyse that in KYC form which was submitted by the Company to the Operational Creditor, it was not stated that the Corporate Debtor was NBFC.

Against this, Ms. Wamika Trehan, Advocate appears on behalf of the Respondent/Operational Creditor. She states that the Operational Creditor had filed caveat in this matter and the Appellant have not served notice on the

Operational Creditor. Learned Counsel for the Appellant states that the Appellant has served the notice and only thereafter registry accepted the Appeal.

The Learned Counsel for Operational Creditor shows a copy of the KYC Form to submit that the Corporate Debtor claimed to be "Pvt. Ltd. Company" by ticking concerned Colum in Para 5 instead of the Colum of "Financial Institution". She states that the Adjudicating Authority rightly considered the conduct of the Corporate Debtor to be not proper.

The matter is required to be heard

Issue Notice. Requisite along with process fee, if not filed, be filed. If the appellant provides e-mail address of Respondent, let notice be also issued through e-mail.

Advocate Trehan dispenses with service formal notice to the Respondent No. 1.

Respondent No. 2 through IRP he served though stated to be formal party.

Respondent may file Reply Affidavit by next date. Considering the dispute and the legal provision pointed out, it would be appropriate that till the next date 'Committee of Creditors' be not constituted, if yet not constituted. It is stated that Public Notice has already been issued.

Till next date 'CoC' may not be constituted, if not yet constituted.

The Appellant/Promoters of the 'Corporate Debtor' are directed to handover the assets and records of the 'Corporate Debtor' to the 'Interim Resolution Professional' immediately (if not yet handed over). The 'Interim Resolution Professional'/'Resolution Professional' will ensure that the Company remains a going concern and will take assistance of the (suspended) Board of Directors and the officers/Director/employees. The persons who are working will

perform their duties including the paid Directors. The person who is authorised to sign the bank cheques may sign cheques only after authorisation of the 'Interim Resolution Professional' with counter signature of the 'Interim Resolution Professional'/RP at the back side of the cheques. In such case, the Bank shall release the payment. The 'Interim Resolution Professional' will place this order before the Banks, in which accounts of 'Corporate Debtor' are maintained. The Bank Account(s) of the 'Corporate Debtor' be allowed to be operated through IRP/RP for day-to-day functioning of the Company such as for payment of Currents Bills of the Suppliers, Salaries and Wages of the employees'/workmen, electricity bills etc.

List the Appeal 'For Admission (After Notice)' on **23th March, 2020.**

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

[Justice Anant Bijay Singh]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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