

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 1006 of 2019

IN THE MATTER OF:

Sudeep Mahendra Shah & Anr.

...Appellants

Versus

Cornelian Properties Pvt. Ltd.

...Respondent

Present: For Appellant :

Mr. Ankur Singhal, Advocate

O R D E R

15.10.2019 The Appellant earlier moved before the Adjudication Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, for initiation of ‘corporate insolvency resolution process’ against ‘Cornelian Properties Pvt. Ltd.’ which having dismissed, the appellant moved before this Appellate Tribunal wherein this Appellate Tribunal while disposing of the appeal, passed order on 13th March, 2019, relevant of which reads as follows:-

“4. In the circumstances, while we are not inclined to interfere with the impugned order dated 9th January, 2019, give liberty to the Appellant to issue demand notice under Section 8(1) on the Respondent and thereafter to take appropriate step in accordance with law. In case, after issuance of demand notice any application under Section 9 is filed, the Adjudicating Authority will decide the same uninfluenced by the impugned order dated 9th January, 2019 as we have not decided the question of pre-existence of dispute in this appeal.

The appeal stands disposed of with aforesaid observations. No cost.”

2. It appears that thereafter instead of giving Notice under Section 8 (1) of the ‘Insolvency and Bankruptcy Code, 2016’ (for short, ‘the I&B Code’), the appellant filed an application under Section 7 of the ‘I&B Code’ and for the said reason the Adjudicating Authority dismissed the application under Section 7 of the ‘I&B Code’.

3. As we find that the Appellant has taken a plea that they are the ‘Operational Creditors’ and on their request liberty was given to the Appellant to issue a Notice under Section 8(1) of the ‘I&B Code’ and in accordance with law they had to file an application under Section 9 of the ‘I&B Code’, we hold that it will not be open to the Appellant to file application under Section 7 of the ‘I&B Code’.

4. On merits also, we find that there is no document on record to suggest that the appellant disbursed any amount for consideration of time value of money. Earlier plea taken shows issue of cheque dated 10th April, 2014 for purchase of flat on 31st December, 2013 and supplementary Sale Deed dated 15th September, 2014 which was claimed as ‘Operational Debt’. Therefore, we find no merit to interfere with the impugned order dated 2nd August, 2019. The appeal is accordingly dismissed.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)