

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 628 of 2018

(Arising out of Order dated 11th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench III in C.P.IB-22/ND/2018)

IN THE MATTER OF:

Sh. Naresh Kumar Sharma

.....Appellant

Vs.

Oriental Bank of Commerce & Anr.

.....Respondents

Present:

For Appellant: Mr. Rakesh Kumar, Mr. Aashish Khattar, Ms. Shivali Singh and Ms. Chetna Bisht, Advocates.

For Respondents: Mr. Amandeep Singh and Ms. Niti Jain, Advocates for R-1.

Mr. Abhishek Anand, Mr. Tushar Tyagi and Mr. Anant A. Pavgi, Advocates for R.P.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Respondent- 'Oriental Bank of Commerce' filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Shekhar Resorts Ltd.'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), New Delhi,

Bench-III, having admitted the application, the appeal has been preferred by the Director/ Shareholder of the 'Corporate Debtor'.

2. Learned counsel appearing on behalf of the Appellant submitted that the 'Corporate Debtor' was not wilful defaulter which has been accepted by the Respondent- 'Oriental Bank of Commerce' itself in its notice dated 19th June, 2016.

3. The Respondent- 'Oriental Bank of Commerce' had shown a total default of debt of Rs.19,67,64,134/- including interest out of which the Appellant has paid Rs.15.88 Crores approximately till March, 2018.

4. It was submitted that the Appellant undertakes to make the payment of the rest of the amount within six months from the date of order as may be passed by this Appellate Tribunal.

5. Learned counsel for the Appellant also raised the question of maintainability of petition under Section 7 of the 'I&B Code' filed by the Respondent- 'Oriental Bank of Commerce'.

6. It was also submitted that the Respondent- 'Oriental Bank of Commerce' initially issued a notice under the 'SARFAESI Act, 2002' and the Appellant filed Securitization Application No. 539/2016 before the Debt Recovery Tribunal, Lucknow, U.P. In the said case, the Respondent- 'Oriental Bank of Commerce' took plea before the Debt Recovery Tribunal that *"in case the Applicant submits any restructuring*

proposal within 15 days from today, the Respondent Bank will consider the same as per guidelines of the Reserve Bank of India. He submits that in pursuance of Demand Notice, Possession Notice and the Sale Notice, the Respondent Bank is not going to take any action against the Applicant”.

7. It was further submitted that in spite of the said undertaking given before the Debt Recovery Tribunal, the application under Section 7 was filed by the Bank.

8. Learned counsel for the Appellant submitted that the ‘National Company Law Tribunal, New Delhi’ has no territorial jurisdiction as the properties of the ‘Corporate Debtor’ is situated at State-U.P., of which ‘National Company Law Tribunal, Allahabad’ has jurisdiction.

9. However, from the appeal, we find that the Appellant has shown the Registered Office of the ‘Interim Resolution Professional’ of the ‘Corporate Debtor’ at “J 6A, Kailash Colony, National Capital Territory of Delhi, New Delhi- 110048”.

10. In the impugned order dated 11th September, 2018, the Registered Office of the ‘Corporate Debtor’ has been shown at “J-1817, Chittaranjan Park, New Delhi- 110019”.

11. The Registered Office of the ‘Corporate Debtor’ being situated at “New Delhi”, we hold in terms of Section 60(1) the ‘National Company

Law Tribunal, New Delhi' has jurisdiction and not the 'National Company Law Tribunal, Allahabad' where properties of the 'Corporate Debtor' may be situated. Therefore, the submissions made by the Appellant relating to maintainability of the application under Section 7 before the Adjudicating Authority (National Company Law Tribunal), New Delhi is rejected.

12. It was next submitted that the person who filed application under Section 7 was provided with Authority Letter for the first time on 5th June, 2018. Therefore, according to the Appellant, the petition under Section 7 was not maintainable as on the date of filing having not presented by any Authorised person.

13. From the record, we find that the application under Section 7 in Form-1 was submitted by 'Cluster Monitoring Head RRL, East & Central U.P Agra' of the Bank who is also the clustering head of recovery. The said 'Cluster Monitoring Head' being the head of recovery for the Bank, we hold that the application under Section 7 in Form-1 at his instance was maintainable.

14. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 11th September, 2018. However, this order will not come in the way of the Appellant to settle the matter under Section 12A of the 'I&B Code', if no 'Resolution Plan' has been approved by the 'Committee of Creditors'/ Adjudicating Authority.

The appeal is dismissed with aforesaid observations. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

NEW DELHI
18th September, 2019

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