

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 17 and 18 of 2018**

**IN THE MATTER OF:**

**Gay Printers,  
C-15, Ohkla Industrial Area,  
Phase-I, New Delhi – 110020.**

**...Appellant**

**Vs**

**Pawan Buildwell Pvt. Ltd.  
59-A, Lane C5, Central Avenue,  
Sainik Farms, New Delhi – 1100062.**

**....Respondent**

**Present:**

**For Appellants: Mr. A. K. Prasad, Mr. Sinha Shrey and Mr. Namit Saxena, Advocates.**

**For Respondents: None.**

**O R D E R**

**16.01.2018.** The present Appellant filed an application under Section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity the 'I&B' Code) for initiation of Corporate Insolvency Resolution Process in respect of the Respondent Company. The Adjudicating Authority (Learned National Company Law Tribunal, New Delhi Bench) rejected the application in terms of order dated 29<sup>th</sup> November, 2017 on the ground that the Appellant does not fall within the ambit of Financial Creditor in respect of the claimed debt so as to maintain the application under Section 7 of the 'I&B' Code. The Adjudicating Authority was further of the view that the Appellant has not disclosed as to how the assets and liability of the earlier Gay Printers Partnership Firm has been assigned to the Appellant and the requisite mandatory form was not complete and true. Feeling aggrieved, the Appellant filed Review Application which also come to be dismissed in terms of order dated 19<sup>th</sup> December, 2017. Both orders, one passed

on 29<sup>th</sup> November, 2017 rejecting the application under Section 7 of the 'I&B' Code and the other order dated 19<sup>th</sup> December, 2017 dismissing the Review Application have been impugned in this appeal.

Heard learned counsel for the Appellant and perused the record. It is an admitted position in the case that the loan amount of Rs.1 Crore was advanced to the respondent Corporate Debtor by the Gay Printers Partnership firm which had two partners namely Mr. Brij Mohan Sahni and Mr. Surinder Mohan Sahni. It is also not in dispute that on the death of Mr. Surinder Mohan Sahni on 2<sup>nd</sup> October, 2015, the Creditor Partnership Firm stood dissolved. There is no material placed on the record of the Adjudicating Authority to demonstrate that the Appellant succeeded to the business of the erstwhile firm Gay Printers and the Appellant reconstituted the firm in continuation of the earlier firm. It appears that after death of Mr. Surinder Mohan Sahni on 2<sup>nd</sup> October, 2015 the surviving partner Mr. Brij Mohan Sahni entered into new partnership with his son without any representation from the side of deceased partner Mr. Surinder Mohan Sahni. It is therefore safe to conclude that the erstwhile partnership firm got dissolved and the new firm came into existence without representation from deceased partner of the erstwhile partnership firm. Therefore the newly constituted firm of Appellant could not be said to be in continuation of and as successor of the earlier firm, both firms being separate entities. Once it is indisputable that the loan of Rs.1 Crore has not been advanced to the Respondent Corporate Debtor by the Appellant's reconstituted new partnership firm, it is for the appellant to demonstrate that the financial debt advanced by the erstwhile partnership firm has been assigned to it. There is no material on the record of Adjudicating Authority to demonstrate that assets including the interest of deceased partner of the erstwhile firm has been assigned to the Appellant. Who succeeded to the estate of deceased Mr. Surinder Mohan Sahni

has not been spelt out in the application filed under Section 7 of the 'I&B' Code. In absence of documentary proof, it cannot be said that the assets and liabilities of the erstwhile Gay Printers Partnership firm including 50% share of deceased partner Mr. Surinder Mohan Sahni stood assigned to the Appellant. Viewed thus, the Appellant has failed to establish his status as Financial Creditor in respect of the claim made for maintaining application under Section 7 of 'I&B' Code. The application has been rejected on merit as also on Appellant's locus to file the claim. The impugned orders do not suffer from any legal infirmity or factual frailty. Thus no interference is warranted.

In view of the foregoing discussion, the appeal is dismissed. However in the circumstances of the case there shall be no order as to costs. File be consigned to records.

(Justice Bansilal Bhat)  
Member (Judicial)

*am/nn*