

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL
BENCH, NEW DELHI
Company Appeal (AT) (Ins) No. 870 of 2021

IN THE MATTER OF:

Ananta Charan Nayak

....Appellant

Vs.

State Bank of India & Ors.

....Respondents

Present:

For Appellant:-

**Mr. Sanjeev Kr. Sharma, Mr. Rajiv
Dalal, Advocates**

O R D E R
(Date: 10.11.2021)
(Through Virtual Mode)

The appeal was heard for admission on 28.10.2021.

2. This appeal is preferred by the Appellant (suspended Director of the Corporate Debtor), who is aggrieved by the order dated 26.8.2021 (hereinafter called Impugned Order) passed in CP (IB) No. 10/2021 by the Adjudicating Authority (National Company Law Tribunal, Gawahati Bench) qua which an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IBC) has been admitted against the Corporate Debtor M/s. Nayak Infrastructure Private Limited. The Appellant is a shareholder, promoter and suspended Director of the Respondent No. 2 - Corporate Debtor.

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3. In brief, the facts of the case are that the Corporate Debtor is a company engaged in the business of engineering, procurement and construction in road/railway projects and bridges and also undertakes turnkey projects encompassing a wide range of services, designs, engineering, procurement, supplies, construction, commissioning and project management etc. The respondent - financial creditors have been doing business with the Corporate Debtor for more than 30 years now.

4. It is stated and argued by the Appellant that the loan taken by it from Respondent No. 1 State Bank of India was wrongly declared as non-performing asset on 28.1.2020 but no alleged default was stated in the notice dated 30.1.2020 issued by Respondent No. 2 State Bank of India. The Appellant has further stated that proceeding before the Debt Recovery Tribunal, Guwahati was initiated against the Corporate Debtor in the year 2020, and the Appellant requested Respondent No. 1 to restructure its loan at that time. Despite many meetings for restructuring of the loan, it was finally not agreed to by Respondent No. 2, and instead of responding to One Time Settlement (OTS) proposal of the Appellant, Respondent No.2 filed

application under section 7 of the IBC against the Corporate Debtor.

5. The Appellant has assailed the Impugned Order dated 26.8.2021 of the Adjudicating Authority (NCLT, Guwahati Bench) qua which CP(IB) No. 10/2021 was admitted and Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor.

6. The Learned Counsel for the Appellant has argued that the Corporate Debtor had raised objections relating to defect in the application filed by the financial creditor State Bank of India (Respondent No.1 in the appeal) challenging the maintainability of section 7 application. The defect, as pointed out by the Appellant, is that the Respondent No.1 had made all the directors and guarantors parties in the section 7 application, and a defective application could not have been adjudicated upon. He has, further claimed that despite bringing on record the defects in the application, the Respondent No. 1 did not file any application before the Adjudicating Authority seeking to amend the application for removal of defects, nor did the Adjudicating Authority issue any direction to that effect.

7. The Learned Counsel for Appellant has stated that the Appellant had intimated its desire to settle the matter by offering a one-time settlement (OTS) to the financial creditor. Pending decision on the OTS, the Adjudicating Authority has passed the Impugned Order to the detriment of the Corporate Debtor. He has also argued that vide order dated 26.7.2021, the petitioner State Bank of India was granted seven days' time to file an affidavit for deletion of the names of personal guarantors from the section 7 application. Such an affidavit was not filed and thus requirements under section 7 of IBC were not complied with strictly. He has argued that in such a situation, and as laid down by the Hon'ble Apex Court in the matter of **Innovative Industries Ltd. v. ICICI Bank** [MANU/SC/1063/2017], the order for admission of section 7 application should not have been given.

8. From perusal of the Impugned Order dated 26.8.2021 (attached at pp.54-88 in Appeal Paperbook) it is clear that in response to the section 7 application, the Managing Director of Corporate Debtor representing Respondent Nos. 1 to 5 filed reply which was considered by the Adjudicating Authority. It is also mentioned in the Impugned Order, paragraph 12 (attached at pgs.

77-78 of the Appeal Paperbook) that Mr. Tushar Ravi, Chief Manager, State Bank of India, Khanapara Branch filed an affidavit dated 4.8.2021 in which he stated that due to inadvertence names of the personal guarantors were inserted as Respondent Nos. 2 to 7 and the names of Respondent Nos. 2 to 7 be deleted from the instant application. Therefore, we do not agree with the contention of the Appellant that the petitioner (financial creditor-State Bank of India) did not comply with the order given by the Adjudicating Authority on 26.7.2021, which was regarding filing of affidavit to delete names of personal guarantors from the section 7 application. (attached at p. 149 of Appeal Paperbook).

9. The other contention of the Learned Counsel of the Appellant is that the Appellant had submitted an OTS proposal to the financial creditor (State Bank of India), which was pending decision, and hence the Adjudicating Authority should not have passed admission order on section 7 application. The acceptance of the settlement proposal by the financial creditor is a matter entirely in the ambit of the financial creditor (SBI) and we do not think that the proceedings before the Adjudicating Authority should have been held up and delayed, waiting for a response by the State Bank of India. IBC does not provide for keeping the

proceedings in abeyance and the application for admission has to be decided in a stipulated timeframe. If a settlement would have been reached, the Appellant would have had recourse to Section 12A of the IBC. We, therefore, do not find this contention of the Appellant sustainable.

10. The **Innoventive Industries judgment** (supra) of the Hon'ble Supreme Court does not put any bar on the admission of an application under section 7 if the defects as pointed out to the petitioner have been cured.

11. On the basis of the above discussion, we are of very clear view that the Impugned Order does not require any intervention. The appeal is, therefore, dismissed at the stage of admission. No order as to the cost.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Dr. Alok Srivastava)
Member (Technical)

New Delhi
10th November, 2021

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