

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 611 of 2021

IN THE MATTER OF:

The South Indian Bank Ltd.

Registered Office:

SIB House, T.B. Road

Mission Quarters, Thrissur,

Kerala – 680001

...Appellant.

Versus

Gold View Vyapaar Pvt. Ltd.

Registered Office:

Hongkong House, 31,

B.B.D Bag(s), Kolkata 700001

...Respondent.

For Appellant: Ms. Malvika Trivedi, Sr. Advocate with
Mr. Parag Maini, Mr. Abhimanyu Chopra,
Mr. Raghav Chadha and Bhargavi Kannan,
Advocates.

For Respondent: Mr. Joy Saha, Sr. Advocate with
Mr. Ishaan Saha, Mr. Santosh Kumar Ray
and Rituparna Sanyal, Advocates.

ORDER
(Virtual Mode)

19.08.2021 Heard Learned Sr. Counsel for the Appellant. Learned Sr. Counsel submits that this Appeal has been filed against the Impugned Order dated 23rd July, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) in C.P. (IB)/404(KB)2020 and IA/524(KB)2021. It is stated that Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) has been pending before the Adjudicating Authority since 30th December, 2019 and the Admission Order is not yet passed one way or the other. On 23rd July, 2021, Adjudicating Authority passed the following order:

“The Ld. Senior Counsel present on both sides.

It is seen that the requisite non-judicial stamp paper is missing on the reply affidavit. The Ld. Counsel-on-record for the Corporate Debtor submits that the defect will be rectified shortly and seeks some time in this regard. At the request, time is granted.

List the matter on 17th August, 2021.”

2. Learned Sr. Counsel for the Appellant points out the earlier Order of this Appellate Tribunal dated 29th January, 2021 (Annexure A-7, Page 159).

Which reads as follows:

“29.01.2021: *The only issue raised in this appeal is that the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, overlooked the mandate of Section 7(4) of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) by postponing the order of admission on the application filed by Appellant under Section 7 of the ‘I&B Code’.*

2. After hearing Mr. Raghav Chadha, Advocate for the Appellant, we find that the application under Section 7 has been filed in December, 2019 and time has been granted to Respondents to file reply umpteen times, three weeks’ time granted in terms of the impugned order being as a last chance. This approach cannot be supported as the Adjudicating Authority is statutorily bound to pass an order of admission or rejection on being satisfied in respect of debt, default and completeness of the application within 14 days from the date of filing of such application. It appears that the matter is now fixed for 18th February, 2021 “for final hearing” which appears to be based on a wrong premise as pre-admission hearing with limited notice to the Corporate Debtor is only to derive satisfaction in regard to the existence of debt, occurrence of default and completeness of the application. On being satisfied, the Adjudicating Authority is required to pass an order of admission. Therefore, it can safely be stated that no final hearing was postulated at pre-admission stage. The Adjudicating Authority will be well advised to be alive to the phraseology/ terminology to be employed at different stages of the CIRP proceedings and not give impression of a final hearing at the pre-admission stage. Be that as it may, now looking to the fact that the matter is posted for 18th February, 2021, we expect the Adjudicating Authority to address the issue at the pre-admission stage and pass an order of admission or rejection as warranted without granting any adjournment.

The appeal is accordingly disposed off.

Copy of this order be communicated to Adjudicating Authority forthwith.”

3. It is stated that even such Order was challenged by the Respondent before the Hon’ble Supreme Court of India in Civil Appeal No. 514 of 2021 copy of which is at Annexure -9, Page 163 which reads as under:

“1. Since the proceedings are still pending before the National Company Law Tribunal, it is not necessary for the Court to entertain the present Appeal.

2. The Civil Appeal is dismissed.

3. Pending applications, if any, stand disposed of.”

4. The Learned Sr. Counsel submits that in spite of all this, the matter is getting protracted before the Adjudicating Authority which defeats the purpose of the provisions of IBC requiring the Application to be admitted within 14 days.

5. This Appeal has come up today before this Appellate Tribunal for the first time. No notice has been issued. However, Ld. Sr. Counsel-Mr. Joy Saha appears on behalf of Respondent. Mr. Joy Saha, Sr. Advocate submits that the Respondent did not file Caveat however coming to know of the matter has caused appearance. The Ld. Sr. Counsel submits that the matter had come up before the Adjudicating Authority on 17th August, 2021 and has been fixed on 07th September, 2021 as a specially fixed matter so that the same can be taken up and disposed. The Ld. Sr. Counsel submits that the Respondent will co-operate so that the Application is decided one way or the other.

6. Considering the provisions of the IBC, we appreciate the pain of the Appellant due to pendency of such Application under Section 7 of IBC which has been pending since 30th December, 2019. We have already said what we

could on 29th January, 2021. We hope that the Adjudicating Authority would in all sincerity take up the Application and decide the same one way or the other.

With these observations, the Appeal stands disposed.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Basant B./gc.