NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 278 of 2023

IN THE MATTER OF:

Indra Nand Choudhary

...Appellant

Versus

Reliance Commercial Financial Ltd. & Anr.

...Respondents

Present:

For Appellant:

For Respondent: Mr. Praful Jindal, Mr. Varun Tandon, Advocates for R-2
Mr. Arvind Jodan, Mrs. Pallavi Raghav, Ms. Taru Saxena, Advocates for R-1

O R D E R

20.03.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 18.10.2022 passed by the Adjudicating Authority by which order the Adjudicating Authority has admitted Section 7 Application of I&B Code, 2016 filed by the Financial Creditor.

3. Learned Counsel for the Appellant challenging the Order submits that the Corporate Debtor was not the borrower nor any disbursement was made to the Corporate Debtor and the Letters which were sent on behalf of the Corporate Debtor by a person who was not authorized to send the letters.

4. We have considered the submissions of Learned Counsel for the Appellant and have perused the record.

5. Submissions which are sought to be raised in this Appeal have been raised before the Adjudicating Authority. The Adjudicating Authority has considered all the aforesaid submissions of Appellant and returned its finding in paragraph 35 to 44 which is to the following effect:

> *"35. To see whether the contentions raised by the Corporate Debtor hold water or not, let us first peruse the Facility Agreement dated 11 January 2018. The name of the borrower has not been mentioned at page 46 of the Company Petition but the name and details of the Corporate Debtor has been mentioned at page 58 of the Company Petition under the heading "DETAILS OF THE BORROWERS". The name of Madhuri Commodities Private Limited has been given as Co-Borrowers.*
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> *36. Apart from that, on perusal of the replies to the recall notices on 19.02.2019, 01.03.2019 (reply sent through Counsel) at paragraph 2 of the said notice, 04.02.2019 (wherein the Corporate Debtor has prayed for restructure of loan), in all the above letters there is clear admission on the part of the Corporate Debtor that the Financial Creditor has granted loan facility to the Corporate Debtor.*
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> *37. Thirdly, we cannot ignore the reply of the Corporate Debtor filed on 30 December 2019 wherein the Corporate Debtor has stated that the Financial Creditor had granted loan to the corporate debtor vide Loan Facility Agreement dated 04 January 2018.*
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> *38. On perusal of the Balance Sheet for the Financial Year 2017-2018, the name of the Financial Creditor is written under the heading for term loans. Hence, there was an agreement for loan between the Corporate Debtor and the Financial Creditor and if there was no disbursal of any amount, the Corporate Debtor would not have sought for restructuring of the loan account on 04 February 2019 (Annexure A-15 at page 86 of the Company Petition).*
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> *39. In the letter praying for restructuring, the Corporate Debtor has submitted that "due to sudden and unanticipated*

financial stress for a temporary period we have not been able to make payment of EMI due on 15.01.2019 only.". The stand taken in the affidavit-in-reply filed by the Corporate Debtor wherein it has stated that they have been making regular payments without any delay is contradictory to this statement made in the letter ibid.

40. It is thus clear that there is a debt and there have been delays in payment of the debt.

41. So far as the allegation that the person who signed the reply affidavit had no authorization does not find a footing as the Board Resolution dated 18 October 2019 that has been filed along with the Vakalatnama has authorized Mr.. Aditya Vikram Agarwal to do all such acts with respect to the proceedings initiated under the Code.

42. The other defenses raised by the Corporate Debtor such as filing a declaratory suit are clearly an afterthought and was done after two years from receiving the notice for this Company Petition.

43. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

44. On perusal of the number of assignments assigned to Mr. Kanchan Dutta in the IBBI website it is seen that he has 27 assignments assigned to him. Since this is a matter filed in 2019 and in the interregnum, clearly several more assignments have been assigned to him. We shall appoint another Insolvency Professional as given by the Board in keeping with the guidelines in this regard as envisaged in Regulation 22 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016."

6. The Adjudicating Authority for coming to the conclusion that the Corporate Debtor was a borrower has also relied on Financial Statement of the year 2017-18 where the name of the Financial Creditor is written under the

heading for term loans. The Learned Counsel for the Appellant has also referred to facility agreement where it is clear that name of the Corporate Debtor was mentioned under the heading as a Co-Borrower. All the attending materials were considered by the Adjudicating Authority and the Adjudicating Authority has rightly come to the conclusion that financial debt was proved and default was committed, there is no error in admitting Section 7 Application of I&B Code, 2016. There is no merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Basant/nn