NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.408 of 2023

IN THE MATTER OF:

Netafirm Agricultural Financing Agency Pvt. Ltd.

...Appellant

Versus

Baliraja Sakhar Karkhana Ltd.

...Respondent

Present:

For Appellant: Mr. Gaurav Mitra, Mr. Siddharth S.

Chapalgaonkar, Mr. Adit Singh, Mr. Sameer

Walimbe, Mr. Vishal Kamble, Advocates.

For Respondent: Mr. Prakhar Tandon and Mr. Prashant Trivedi,

Advocates.

ORDER

O3.05.2023: I.A. No. 1823 of 2023: This is an application praying for condonation of 14 days delay in filing the Appeal. The ground taken in the application is that the order was uploaded on the website on 06.01.2023 and thereafter Appellant obtained the copy and was under bonafide impression that appeal can be filed within 30 days from uploading of order, due to which delay was caused. Cause shown sufficient, delay in filing the appeal is condoned. I.A. No. 1823 of 2023 stands disposed of.

2. Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This Appeal has been filed against the order dated 23.11.2022 by which the application filed under Section 7 by the Appellant has been rejected on the ground that it does not fulfil the threshold limit of Rs.1 Crore.

- 3. Learned counsel for the Appellant challenging the impugned order contents that in the application under Section 7 total debt claimed was Rs.1,33,68,915/- which also included the interest. It is submitted that in the Deed of Guarantee the amount of interest was also contemplated, hence, for computing the total debt interest is also to be looked into. The Adjudicating Authority without adverting to the above only referred to Principal Amount and held that application does not fulfil the threshold.
- 4. Learned counsel for the Respondent submits that there were other issues including limitation in the Section 7 application, which may be looked into by this Tribunal.
- 5. We have considered the submissions of learned counsel for the parties and perused the record.
- 6. The copy of application under Section 7 has been annexed alongwith the Appeal which indicate that the amount of Principal and Interest added is Rs.1.33 Crore i.e. beyond the minimum threshold required. Learned counsel for the Appellant has referred to Deed of Guarantee, which mention about the interest on default. We, thus, are of the view that for finding out threshold both amount Principal and Interest has to be computed. The Adjudicating Authority thus committed error in rejecting the application under Section 7 for not fulfilling threshold. So far as submission of learned counsel for the Respondent that there are other issues including limitation, that are the issues

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which may be gone into by the Adjudicating Authority, when application under

Section 7 is heard.

7. In result, we allow the Appeal. Set aside impugned order dated

23.11.2022 passed by the Adjudicating Authority and remit the matter to the

Adjudicating Authority to hear the Section 7 application afresh. We make it

clear that we are not expressing any opinion on the merits of the case, which

may be looked into by the Adjudicating Authority in the Section 7 application.

[Justice Ashok Bhushan] Chairperson

> [Barun Mitra] Member (Technical)

Archana/nn