NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 871 of 2022

IN THE MATTER OF:

Gateway Offshore Pvt. Ltd. & Anr. ....Appellants

Vs.

Runwal Realtors Pvt. Ltd. ....Respondent

Present:

For Appellants: Mr. Lzafeer Ahmad, BF, Advocate

For Respondent: Mr. Atit Soni, Advocate

ORDER

10.07.2023: Heard Learned Counsel for the Appellant.

This appeal has been filed against the order dated 10.06.2022 by which Adjudicating Authority rejected section 7 application filed by the Appellant. The Appellant has filed the application claiming that the amount was disbursed by the Financial Creditor No. 1 and Financial Creditor No. 2 to the Corporate Debtor and Corporate Debtor was liable to repay the loan and that Corporate Debtor failed to repay the loan.

2. The notice was issued and thereafter reply to Section 7 application has been filed. The Corporate Debtor filed its reply and submitted that amount was disbursed for joint development of the land owned by the Corporate Debtor. The Financial Creditor was liable to contribute Rs. 17 crore out of which only Rs. 4.43 crore has been paid to the Corporate Debtor. There was no loan agreement or any communication in the form of the letter etc. for the purpose of substantiating the claim.

3. The Adjudicating Authority after hearing the parties rejected section 7 application. The Adjudicating Authority observed that in the Financial Statement of the Corporate Debtor for the year 2016-2017 and 2017-18, no debt was reflected specifically to the Financial Creditor, hence the Appellant failed to prove any financial debt.

4. Learned Counsel for the Appellant submits that in event the Corporate Debtor did not disclose the debt, the Financial Creditor cannot suffer. It is submitted that with regard to the claim of the Corporate Debtor that it was a joint venture amount in the financial statement, no investment was shown towards Joint Venture.

5. We have considered the submission of the Learned Counsel for the parties and peruse the record.

6. Adjudicating Authority has returned the findings after hearing the parties in the paragraph 21 and 22 to the following effect: -

> *"21 However, the Financial Creditor has failed to bring on record any other evidence in the form of a loan agreement, promissory note, contract or any document to substantiate its claim that there was a financial debt and a default of the same. The Financial Creditor has produced the Corporate Debtor's Annual reports for the Financial Years 2016-2017 and 2017-18. However, the same do not reflect any debt due specifically to the Financial Creditor.*
>
> *22. Further, the Financial Creditor has placed reliance on its bank statements and confirmation of accounts of the Corporate Debtor that reflect transactions between the parties. However, in absence of any written document indicating the purpose of the said transactions, it cannot be assumed to have been towards a loan as claimed by the Financial Creditor."*

7. The present is a case where disbursement of the amount by the Financial Creditor is not disputed by the Corporate Debtor but the case of the Corporate Debtor was the said amount was disbursed towards Joint Venture and out of the amount which was required to be paid by the Corporate Debtor of Rs. 17 crores,

only Rs. 4.43 crore was given. There is no material on the record placed by the Appellant to indicate that there was any disbursement for time value of money so as to accept the debt as a financial debt.

8. The financial statement of the Corporate Debtor cannot be said to be irrelevant document which has been relied. No debt is reflected in the Financial Statement of the Corporate Debtor. The Appellant did not file their balance sheet to indicate the debt due on the Corporate Debtor.

9. We, thus, are of the view that the Adjudicating Authority did not commit any error in rejecting Section 7 application, there is no merit in the appeal, ***the Appeal is dismissed.***

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

ss/nn