

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1468 & 1469 of 2023

IN THE MATTER OF:

Ratnakar Sharma

...Appellant

Versus

Aditya Birla Finance Ltd. & Anr.

...Respondents

Present:

**For Appellant : Mr. Vishesh Kalra and Mr. Hardik Khatri,
Advocates.**

**For Respondent : Mr. Saurav Agarwal, Mr. Debarshi Dutta, Ms.
Manvi Adlakha, Ms. Anusha Sinha and Mr. Ajay
Sharma, Advocates.**

O R D E R
(Hybrid Mode)

02.08.2024: Heard Counsel for the Parties.

2. This Appeal has been filed against an Order dated 31.10.2023 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Court-IV) in C.P. (IB) No.- 685/2022, by which Order Section 7 Application filed on behalf of the Financial Creditor, Aditya Birla Finance Limited has been admitted.

3. The Appellant come up with the Prayer that the Appellant is ready to pay all defaulted EMIs along with the payable interest within two weeks.

4. Considering the said submission that the Interim Order was passed by this Tribunal on 10.11.2023 directing that in the meantime, in pursuance of the Impugned Order, CoC may not be constituted. Subsequently, the Appellant failed to deposit the amount and the Interim Order was vacated by this Tribunal.

5. Learned Counsel for the Appellant challenging the Order submits that the Loan Recall Notice which was issued by the Financial Creditor itself was

invalid since it was not in accordance with Loan Agreement and there was no event of default. He has referred to Clause 19.5 of the Loan Agreement. It is submitted that Financial Creditor was well aware about the defaults of the co-borrower which was in default with several Financial Creditors hence the ground taken in the Loan Recall Notice is not a valid ground for initiation of Section 7 Proceeding.

6. Learned Counsel for the Respondent refuting the submission contends that Schedule IV which is existing financial indebtedness of SNL was only refer to financial indebtedness of the SNL and does not contain any admission of default. It is submitted that the co-borrower of the Corporate Debtor itself has sent a letter to the National Stock Exchange of India Limited on 02.01.2022 containing the disclosure which clearly mentions the term loan outstanding and loan defaults which is admission of the Corporate Debtor itself. It is submitted that the Loan Recall Notice issued by the Financial Creditor on 24.05.2022 clearly makes out event of default for Loan Recall and that is the basis of Section 7 Application.

7. After having heard the Counsel for the Parties, we are of the view that when there is a clear admission of the co-borrower of the Corporate Debtor by letter dated 02.01.2022 which is disclosure to the National Stock Exchange of the default we fail to see that on what basis it can be contended that there was no event of default for Recall Notice by the Financial Creditor.

8. We do not find any error in the Notice for Recall issued by the Financial Creditor on the Loan, hence the Application under Section 7 cannot be said to be unfounded as contended by the Counsel for the Appellant.

9. Learned Counsel for the Respondent further submits that to the Loan Recall Notice, there was no response given by the Corporate Debtor.

We thus do not find any ground to interfere with the Order of the Adjudicating Authority admitting Section 7 Application debt and default having been found proved. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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