

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 884 of 2022 &
I.A. No. 2458 of 2022

IN THE MATTER OF:

Amour Infrastructure LLP
(Formerly known as Amour Infrastructure Pvt. Ltd.)

...Appellant

Versus

Digital Integrated Technologies Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Karan Luthra, Mr. Naman Gowda, Advocates.

For Respondent: Mr. Jitin Singhal, Mr. S.D. Singh, Advocates.

O R D E R

03.10.2023: Heard Learned Counsel for the parties. This appeal has been filed against the order dated 23.05.2022 passed by Adjudicating Authority (National Company Law Tribunal, Allahabad Bench, Prayagraj) by which order Adjudicating Authority has rejected Section 7 application filed by the appellant (Financial Creditor). Appellant has filed an application claiming the financial debt which is due on the Corporate Debtor.

2. It is the case of the appellant that loan of Rs. 1,00,00,000/- with carrying an interest of 24% p.a. was advanced as per Loan-cum- Share Pledge Agreement dated 20.11.2017. It is submitted that default was committed in payment, hence, the application was filed. Adjudicating Authority by the impugned order rejected the application taking the view that application is not liable to admitted as per provision Section 65 of IBC, 2016 which are clearly attracted.

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3. Learned Counsel for the appellant challenging the order contends that disbursement of loan has admitted and partial repayment of the loan has also been made and the debt was due, hence, the Adjudicating Authority's finding that Section 65 of IBC attracted is without any basis.

4. Learned Counsel for the respondent refuting the submission of learned counsel for the appellant submits that entire amount has been paid to the appellant. Some amount has been paid to the appellant admittedly and some amounts have been paid to his son and his company, as per instructions of the appellant, which is referable to loan agreement itself, where Clause (h) of the agreement provides so.

5. Learned Counsel for the respondent has referred to the findings in paragraph 26 of the order which is to the following effect:

"From these facts, we have got reasonable basis to reach to a conclusion that application filed under Section 7 is a mechanism whereby financial creditor is trying to settle personal scores and put undue pressure on the corporate debtor. hence, we have no hesitation in holding that this application has been filed with malicious intent and for purposes other than the Resolution of Insolvency of the Corporate Debtor. We further find that corporate debtor is a solvent company".

6. We have considered submissions of learned counsel for the parties and perused the records.

7. The submissions which is sought to be pressed by the respondent in this appeal that entire amount is paid and the application is malicious application

but there is no findings in the order of Adjudicating Authority that entire amount has been paid and nothing is due, hence, the application is malicious.

8. Observations made in paragraph 26 is that Financial Creditor is trying to settle personal scores and put undue pressure on the Corporate Debtor. We are of the view that for proving the ingredient of Section 65 there has to be adequate pleadings and findings. Observations made in paragraph 26 does not fulfill the requirement of Section 65 so as to reject the Section 7 application.

9. We, thus, are of the view that the order of the Adjudicating Authority impugned cannot be sustained and is hereby set aside. In result, we revive the Section 7 application before the Adjudicating Authority which may be decided afresh after hearing both the parties in accordance with law.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

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