

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1863 of 2024

In the matter of:

**Abhishek Singh,
Suspended Directors of Manpasand Beverages Ltd.**

....Appellant

Vs.

Yoginkumar Ashokbhai Patel & Anr.

...Respondents

For Appellant

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Himanshu Satija, Mr. Harsh Saxena, Mr. Shevaaz Khan, Ms. Ridhi Ranjan, Mr. Aditya Shukla, Advocates.

For Respondents

**Mr. Gaurav Mitra, Mr. Abhishek Devgan, Advocates for R1
Mr. Vishal Hirawat, Mr. Mrigank Kumar, Advocates for R2.**

ORDER

(Hybrid Mode)

26.09.2024: Heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant as well as Shri Gaurav Mitra, Learned Senior Counsel for the Respondent.

2. This Appeal has been filed against the order dated 24.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Ahmedabad Division Bench, Court-1 by which order the Adjudicating Authority has admitted Section 7 application filed by the Respondent herein. The earlier application was disposed of on account of insolvency had commenced against the Corporate Debtor which proceedings were restored by the Adjudicating Authority vide its order dated 03.07.2024 and thereafter notices were issued. Nobody appeared for the Corporate Debtor, hence, the Adjudicating Authority proceeded ex parte against the Corporate Debtor and by the impugned order has admitted Section 7 application.

3. Counsel for the Appellant challenging the order submits that there was no financial debt which was claimed in Section 7 application. The amount of Rs.2,65,00,000/- which was transferred by RTGS is not even denied, however, the nature of the debt that it was financial debt was denied by the Appellant and Corporate Debtor has filed reply in the earlier round raising question of maintainability of the application and all other pleas. It is submitted that the Adjudicating Authority has relied on the summons issued by the SEBI to come to the conclusion that the amount was accepted as loan.

4. We have also looked into the said observations of the Adjudicating Authority which is recorded in paragraph 15 (vi). A perusal of the said summons to the corporate debtor cannot indicate that there was any admission on the part of the corporate debtor accepting the amount as financial debt. The question of limitation has also been raised by the Appellant and submits that the period during which earlier CIRP was going cannot be excluded whereas Adjudicating Authority has excluded the said period giving benefit of Section 14 of the Limitation Act. Counsel further submits that the Appellant was not served notices. Since the e-mail of the corporate debtor was not functional and registered posts were sent to the Factory.

5. Shri Gaurav Mitra, Learned Counsel for the Respondent submits that the amount was transferred by RTGS which is not an issue and has correctly been accepted by the Adjudicating Authority. He submits that the SEBI summons clearly mentions that the amount has been transferred by the financial creditor which is noted by the Adjudicating Authority in paragraph 15(vi). It is submitted that it was a financial debt. It is further submitted that the notices were sent in the restoration application as well as in Section 7 application which was served on the corporate debtor. Despite the service, nobody appeared, hence, the Adjudicating Authority has rightly proceeded as ex parte and admitted Section 7 application.

6. In Part-IV of the application, there was no other material by the financial creditor to indicate the nature of financial debt. We have looked Part IV and Part V apart from the transfer of the amount by RTGS there is no other

material or pleading. We are of the view that submissions made by the parties require consideration.

7. Counsel for the Appellant submits that to show his bonafide, Appellant is ready to deposit Rs.2,65,00,000/- in the interest bearing account. Let amount of Rs.2,65,00,000/- be deposited by way of Fixed Deposit in favour of 'Registrar, National Company Law Appellate Tribunal, New Delhi' within one week.

8. Counsel for the Appellant submits that even publication has not yet been made by the IRP.

9. Issue Notice. Let reply be filed within two weeks.

10. List this Appeal for disposal on 17.10.2024. Rejoinder, if any, be filed before the date fixed.

In the meantime, the impugned order dated 24.09.2024 shall remain suspended.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Anjali/nn