

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 647 of 2024

IN THE MATTER OF:

Anil Nair

...Appellant

Versus

Romi Surendra Madhani & Anr.

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate with Mr. Siddharth Nath, Ms. Khushboo, Ms. Anunay Chaowdhary, Mr. Sanjay Ruia, Mr. Ajjad Hussain, Mr. Nirav Shroff, Ms. Dimple Asrani and Mr. Aditya Dhupar, Advocates.

**For Respondents : Mr. Gaurav Joshi, Sr. Advocate with Mr. Feroze Patel, Mr. Sahil Gandhi, Ms. Dimple Vora, Ms. Riddhi Shah, Mr. Vikas Mewa and Mr. Bhaskar Nayak, Advocates.
Mr. Rishi Kumar Singh and Mr. Gautam, Advocates for R-2.**

O R D E R
(Hybrid Mode)

03.04.2024 We have heard Sh. Arun Kathpalia, Sr. Advocate appearing for the Appellant and Sh. Gaurav Joshi, Sr. Advocate appearing for the Respondent.

2. This Appeal has been filed against the Order dated 22.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal Mumbai Bench – IV) in C.P. (IB) No. 707/MB/2023, by which Section 7 Application has been admitted filed by the Respondent claiming to be a Financial Creditor.

3. Appellant's case in the Appeal is that the Ahmedabad Municipal Corporation has awarded a contract to partnership firm M/s. NK Shah Infraprojects (hereinafter referred to as '**NK Shah**') of which the Respondent was Managing Director.

4. It is submitted that the NK Shah sub-contracted the work to the Corporate Debtor and a draft MoU was forwarded on 03.01.2020, which was responded on 04.01.2020 by the Corporate Debtor with few minor changes and thereafter the Bank Account was opened which was to be operated as per MoU agreed between the Parties and thereafter work was continued. Under the MoU it was proposed that NK Shah shall be responsible to procure funds for the execution of project and it is submitted that amount was routed through Financial Creditor which was sent by NK Shah to the Financial Creditor and then thereafter Corporate Debtor. Appellant, in the Appeal has given the date and amount which was forwarded from the NK Shah to the Financial Creditor and thereafter to the Corporate Debtor.

5. It is submitted that there was no financial contract with the Financial Creditor nor it was a Financial Debt and the amount was received from the NK Shah and the Financial Creditor as per the MoU for carrying out the Project.

6. It is submitted that the amount which was given to the Corporate Debtor was under the internal arrangement of the NK Shah and the Financial Creditor.

7. It is further submitted that on 28.06.2022 a letter was send by the Appellant asking for his dues and in the letter, Appellant had said that still the amount of more than Rs. 2 Crore/- is due after adjusting the advance received from the NK Shah and the Respondent herein.

8. Learned Counsel for the Appellant has also referred to various Whatsapp Chats between the parties which indicate the debt dues were never disputed and it was only subsequent to 28.06.2022 the Financial Creditor filed the application under Section 7.

9. It is further submitted that Ahmedabad Municipal Corporation has already paid the amount which was mentioned in the letter dated 28.06.2022 itself. Learned Counsel for the Appellant submits that on the date when the matter was listed for hearing a request was made for adjournment due to the reason that Sr. Advocate who was appearing for the Corporate Debtor was not available but the said request was rejected by the Adjudicating Authority and Adjudicating Authority proceeded to hear the matter and reserved the Judgement.

10. It is submitted that all several issues could not be placed before the Adjudicating Authority due to appropriate hearing not being given to the Corporate Debtor.

11. Mr. Gaurav Joshi, Sr. Advocate appearing for Respondent refuting the submission of the Appellant submits that there was no MoU entered between the parties and the amount paid by the Financial Creditor is duly reflected in

the Balance Sheets of the Corporate Debtor. He submits that the said amount has been referred as advance loan. He submits that in view of the Balance Sheet of the Corporate Debtor, the Financial Debt was proved. He has also referred to the acknowledgement dated 01.04.2021 which was sent by the Corporate Debtor accepting the amount due to the Financial Creditor.

12. Learned Counsel for the Appellant in Rejoinder submits that the circumstances under which the confirmation was given on 01.04.2021 is reflected in the Whatsapp Chat between the parties, on behalf of the Corporate Debtor a condition was put regarding the interest which however on the insistence of the Respondent, confirmation was given since 31.03.2021 was approaching.

13. It is submitted that the arrangement for financing the project was between the NK Shah and the Financial Creditor which was their own arrangement and there was no other arrangement with the Financial Creditor and the Corporate Debtor with regard to amounts received from the Respondent.

14. It is submitted the present is the case where Adjudicating Authority erroneously admitted the Section 7 application.

15. Submissions advanced by the Counsel for the parties needs consideration. The Appellant has made out a case for grant of interim relief.

16. Issue Notice.

17. Let Reply be filed to the Appeal within two weeks. Rejoinder may be filed within two weeks thereafter.

List this Appeal on **07th May, 2024.**

In the meantime, Order dated 22.03.2024 shall remain stayed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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