

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

**Company Appeal (AT) (Insolvency) No. 863 of 2023**

**IN THE MATTER OF:**

**Ishap Sharma**

**...Appellant**

**Versus**

**SMID Infrastructure Pvt. Ltd.**

**...Respondents**

**Present:**

**For Appellant:** Mr. Himanshu Harbola, Kitan Madan, Rohit Rajliwal,  
Advocates

**For Respondent:**

**ORDER**

**20.07.2023:** Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 27<sup>th</sup> April, 2023 by which Section 7 Application filed by the Appellant has been rejected.

3. The Appellant is a whole-time director and 50% shareholder of the Corporate Debtor. He filed Section 7 Application for a financial debt of Rs. 1,46,03,369/-. The Corporate Debtor did not appear and the Adjudicating Authority decided to proceed ex-parte against the Corporate Debtor. When the Application came for hearing, the Adjudicating Authority observed that Application is not bona fide filed and Appellant who is 50% shareholder of the Corporate Debtor and the person behind the Corporate Debtor was one namely the Appellant.

4. In paragraph 11 and 12, following observations have been made:

*“11. This Adjudicating Authority is of the earnest view that the present case is a fit case to lift the corporate veil of the corporate debtor. The Applicant being in control*

*of 50% of the Board of Director of the Corporate Debtor and holding 50% of the equity shares of the Corporate Debtor is the promoter of the Corporate Debtor. The Applicant for the reasons best known to him instead of taking pro-active approach of representing the Corporate Debtor before this Adjudicating Authority has conveniently decided to stay ignorant towards the application and let the Corporate Debtor be pushed in Corporate Insolvency Resolution Process. After piercing the corporate veil, we are of the earnest view that the person behind the Corporate Debtor is one and only the application Mr. Ishap Sharma herein.*

*12. Thus, from the facts which are borne on record, as narrated above and analysed by this Adjudicating Authority, we are of the considered view that the present application filed under Section 7 of the Code, 2016 is filed without bona fide purpose of resolution of the insolvency of the Corporate Debtor. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing I.A./334(ND)/2022 being devoid of merits stands dismissed. No orders to costs.*

5. Learned Counsel for the Appellant submits that he has infused money and the said money is not being returned. He further submits that there is another director in the Company.

6. Be that as it may, in the facts of the present case, the Adjudicating Authority has rightly observed that Application filed by the applicant is not bona fide application. Corporate Debtor who was issued notice did not appear and proceeded ex-parte and the Appellant being 50% shareholder of the

Corporate Debtor is prosecuting the Application and the Corporate Insolvency Company Appeal (AT) (Insolvency) No. 863/2023

Resolution Process against the Corporate Debtor. We are of the view that no error has been committed in rejecting Section 7 Application.

7. Learned Counsel for the Appellant has relied upon the Judgment in “**Shailesh Sangani vs. Joel Cardoso & Anr.**” where the Appellate Tribunal has made following observation:

*“the NCLAT held that the monies advanced by the directors or shareholders of the company to improve the financial health or boost the economic prospects of a company have the commercial effect of borrowing and as such it is a financial debt.”*

8. The observation made by this Tribunal as quoted above that monies advanced by the directors or shareholders may be financial debt are correct and we are not taking any different view in the matter. In the present case, the Adjudicating Authority has returned a finding that Application is not bona fide filed in the facts of the present case, hence we are of the view that above judgment does not come to any help to the Appellant.

The Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Mr. Barun Mitra]**  
**Member (Technical)**

*Basant/nn*