

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

**Company Appeal (AT) (Insolvency) No. 1473 of 2024**

&

**I.A. No. 5362 of 2024**

**IN THE MATTER OF:**

**Terry E D'souza**  
**(Suspended Director of Marshall Breeders Pvt. Ltd.)**                      **...Appellant**

## Versus

**Omkara Asset Reconstruction Pvt. Ltd. & Ors. ...Respondents**

**Present:**

**For Appellant : Mr. Firoze Patel, Mr. Akhil Abraham Roy and Mr. Yash Tewari, Advocates.**

**For Respondents : Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Palak Kalra, Advocates.**

## ORDER (Hybrid Mode)

**05.09.2024:** Heard Counsel for the Appellant.

**2.** This Appeal has been filed against an Order dated 15.05.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Bench – VI), by which Section 7 Application filed by Omkara Assets Reconstruction Pvt. Ltd. has been admitted.

**3.** Brief facts of the case are that:

- i. Corporate Debtor, Marshal Breeders Private Limited took financial facility from a Co-operative Bank namely Janlaxmi Co-operative Bank Ltd.
- ii. The financial facilities could not be repaid and default was committed.
- iii. An Assignment was made by Janlaxami Co-operative Bank in favour of the Omkara Asset Reconstruction Pvt. Ltd. on 31.12.2021.

- iv. Subsequent to Assignment, Financial Creditor filed an Application under Section 7 on 30.03.2022 against the Corporate Debtor.
- v. A Suit was filed by C&M Farming Ltd. against the Financial Creditor on 31.03.2022 in which although an interim injunction was granted but the Suit was dismissed on an Application under Order 7 Rule 11 of the CPC filed by the Financial Creditor. The Suit was dismissed against which the Appeal has been filed where no Interim Order has been passed.
- vi. Adjudicating Authority proceeded to consider the Application and by Impugned Order has admitted the Application.

**4.** The submissions which was advanced before the Court were challenge to the Assignment as well as Limitation that the Application is barred by Limitation. Another Application under Section 7 filed by the Financial Creditor being C.P. (IB) No. – 1031/MB/2021 by the Omkara Asset Reconstruction Pvt. Ltd. on the basis of Assignment by another Co-operative Bank in which Application was also admitted under Section 7 which was sought to be challenged by the present Appellant in the matter of '**Terry E D'Souza (Suspended Director of C & M Farming Ltd.) Vs. 'Omkara Assets Reconstruction Pvt. Ltd. & Ors.'** in **Comp. App. (AT) (Ins.) No. 615/2024**, which Appeal has been heard and finally dismissed on 30.08.2024.

**5.** Learned Counsel for the Appellant fairly concedes that the question of challenge to Assignment as well as the Limitation are fully covered by the said Judgment in '**Terry E D'Souza (Suspended Director of C & M Farming Ltd.) (Supra)** and those submission needs no fresh consideration in this Appeal. He however submits that there were other arguments which were

raised before the Adjudicating Authority which has not been considered. Learned Counsel for the Appellant has referred to Paragraph 5.4 of the Order of the Adjudicating Authority which provides as follows:

*“5.4 When the issues regarding limitation and assignment of debt are proved in favour of the FC, as also the debt and default admitted by the CD by acknowledgment of debt in its financial statements dated 31.03.2021, we are of the considered view that this Application is only to be admitted. In the circumstances, we hold that there is no need to consider any other contention or rival contention raised by the parties. The Application is complete and satisfies all the necessary requirements for admission under Section 7 of the IBC.”*

**6.** Learned Counsel for the Appellant submits that Assignment itself was fraudulent hence Application ought not to have been admitted.

**7.** We have considered the submissions of Counsel for the Appellant and perused the record.

**8.** As observed above, the challenge to the Assignment as well as the ground of limitation has already been dealt with in ***‘Terry E D’Souza (Suspended Director of C & M Farming Ltd.’ (Supra)*** and the submissions raised by the present Appellant are fully covered by the said Judgment.

**9.** Now coming to the submission of the Appellant that Assignment was fraudulent and Adjudicating Authority did not proceed to consider any other submission.

**10.** It is submitted that in the Civil Court the proceedings are pending where Assignment has been challenged.

**11.** The Section 7 Application was filed by the Financial Creditor on the default committed by the Corporate Debtor and the mere fact that some

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challenge in the Civil Court is pending with regard to Assignment cannot be a ground to postpone the consideration of Section 7 Application. The objects of Section 7 Application are entirely different from any litigation and disputes between the Parties which are awaiting adjudication by a Civil Court.

**12.** We thus are of the view that when the Adjudicating Authority found debt and default by the Corporate Debtor, Adjudicating Authority did not commit any error in admitting Section 7 Application.

We thus do not find any error in the Order, following the Judgment of this Tribunal in '***Terry E D'Souza (Suspended Director of C & M Farming Ltd.) (Supra)***', this Appeal is dismissed.

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

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

**[Arun Baroka]**  
**Member (Technical)**

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