

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

**Company Appeal (AT) (Insolvency) No. 661 of 2024
& I.A. No. 2374 of 2024**

IN THE MATTER OF:

Krystal Stone Exports Ltd.

...Appellant

Versus

Stressed Assets Stabilization Fund

...Respondent

Present:

**For Appellant: Mr. Shashank Deo Sudhi, Mr. Aru Prakash,
Advocates.**

For Respondent: Mr. Mohit Nandwani, Advocate.

**ORDER
(Hybrid Mode)**

08.04.2024: Heard learned counsel for the parties. This Appeal has been filed against order dated 04.01.2024 passed by the Adjudicating Authority by which I.A. No.5693 of 2023 filed by the Corporate Debtor challenging the tenability of Affidavit of Rejoinder filed by the Financial Creditor has been rejected. The Section 7 application was filed by the Financial Creditor, against which Reply was filed by the Appellant herein, the Corporate Debtor. In response to the Reply, a Rejoinder Affidavit was filed by the Financial Creditor and in the Rejoinder, financial statement of the Corporate Debtor and OTS related documents were brought on the record. The Adjudicating Authority accepted the documents and Rejoinder filed by the Financial Creditor. Challenging which Rejoinder application was filed which has been rejected by the impugned order, aggrieved by which order this appeal has been filed.

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2. Learned counsel for the Appellant submits that the Financial Creditor has not set up the pleas in the Section 7 application which is now sought to be brought by the documents and documents were not referred in the Section 7 application earlier, hence, Rejoinder ought not to have been accepted. Appellant has placed reliance on the judgment of this Tribunal in *“Company Appeal (AT) (CH) (Ins) No.87 of 2023, State Bank of India vs. India Power Corporation Ltd.”*, para 23.

3. Learned counsel for the Respondent submits that the Section 7 application has already been heard and reserved for orders and this Appeal which was filed by the Appellant on 26.01.2024 is now sought to be argued.

4. We have considered the submissions of learned counsel for the Appellant as well as learned counsel for the Respondent and perused the record.

5. The Adjudicating Authority in the impugned order in Para 2 has noticed the documents which were sought to be brought on the record, which is as follows:

“2) The present Interlocutory Application has been filed by the Corporate Debtor challenging the tenability of the Affidavit in Rejoinder filed by the Financial Creditor contending that the Financial Creditor subsequently introduced financial statements of the Corporate Debtor and OTS related documents through the said Rejoinder, and such Rejoinder in Reply to the Reply of

Applicant/ Corporate Debtor cannot be permitted in a routine manner. This Bench finds that the NCLT Rules permit submission of Rejoinder with the leave of this Court and it does not postulate that such leave has to be prior in time. Further, these documents are in nature of Financial statements and OTS related documents, which belongs to the Corporate Debtor and in complete knowledge of the Corporate Debtor. Hence, these documents do not prejudice the Corporate Debtor, even if the same are taken on record. Accordingly, this Bench grants the leave of this Tribunal and takes on record the Rejoinder filed by the Applicant.”

6. Along with the Rejoinder documents which were sought to be filed by the Financial Creditor were financial statement of the Corporate Debtor and OTS related documents. We see not reason to interfere with the order by which above documents has been accepted on record. The mere fact that the said documents were not referred to in the Section 7 application cannot disentitle the Financial Creditor to bring on record the said documents when plea was raised in the Reply by the Corporate Debtor that application is barred by time.

7. In so far as judgment relied by the Appellant of this Tribunal, the observation made in the judgment clearly indicate that the rejoinder can be accepted with the leave of the Court and necessary additional pleading can be heard which is necessary for just decision by the Bench. The power of the Court to accept the rejoinder and document is not being questioned. When the issue of limitation is raised, it is duty of the Court to decide the question of limitation even if no defence is raised and for deciding the question of

limitation party are at liberty to file relevant documents. When the Corporate Debtor questioned the application as barred by time, it was open for the Financial Creditor to bring on record the relevant documents claiming acknowledgment of the Corporate Debtor.

8. We, thus do not find any error in the order of the Adjudicating Authority accepting Rejoinder on record. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/nn