

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1016 of 2024

&
I.A. No. 3696 of 2024

IN THE MATTER OF:

Paras Builders and Promoters

...Appellant

Versus

ASREC India Ltd. & Ors.

...Respondents

Present:

For Appellant :

For Respondents : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advcoates for RP.

Ms. Nistha Gupta and Mr. Anuj Panwar, Advocates for R-1.

O R D E R
(Hybrid Mode)

08.07.2024: **I.A. No. 3696 of 2024**

1. This is an application praying for condonation of 9 days delay in filing the appeal.

2. The ground taken in the Affidavit is that Counsel for the Appellant was not well due to which the appeal could not be prepared and filed on time.

Cause shown sufficient. Delay is condoned.

Comp. App. (AT) (Ins.) No. 1016 of 2024

1. This appeal has been filed against an order dated 02.02.2024 by which I.A. No. 380/2023 filed by the Appellant, Promoters through its executive partners have been rejected.

2. An application was filed by the Bank of India under Section 7 against the Corporate Debtor in which by the Assignment Agreement dated

30.03.2022 M/s. ASREC was substituted and they prosecuted the application and the Adjudicating Authority subsequently has admitted Section 7 application vide order dated 31.03.2023 appointing the Interim Resolution Professional.

3. The Appellant aggrieved by the said order has filed the I.A. praying for recall of the admission order.

4. Learned Counsel for the Appellant submitted that the Appellant has already challenged the Assignment Agreement which challenge is pending in the Civil Court. It is submitted that with regard to proceedings under SARFAESI taken by the Bank there was OTS and challenge is pending in the Civil Court. It is submitted that Financial Creditor ought to have impleaded the Appellant also as one of the parties to the Section 7 application and Assignment Agreement having been challenged Section 7 application ought not to have been admitted.

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

6. The application under Section 7 was filed by the Bank of India the Financial Creditor of the Corporate Debtor in which subsequently, on basis of Assignment Agreement dated 30.03.2022 M/s. ASREC (India) was substituted who prosecuted the application which has been admitted by the Adjudicating Authority having found debt and default. By the impugned order, the application praying for recall of the order has been rejected.

7. The submission of the Appellant that Assignment Agreement is under challenged in the civil proceeding is not relevant for recall of the order admitting Section 7 application.

8. The mere fact that certain OTS was undertaken by the Appellant to take the debt of the Corporate Debtor and the proceeding under SARFAESI are under challenge which are pending adjudication before the Competent Court cannot be a ground to stay the proceeding under Section 7 nor there was any such order passed by any Court staying the proceeding of Section 7. The mere fact that Suit 183/2022 filed by the Appellant is pending cannot be a ground to recall the order passed by the Adjudicating Authority admitting Section 7 application.

9. The ground to recall the Judgment by the Adjudicating Authority are limited as held by the 5 Member Bench in '*Union Bank of India*' Vs. '*Dinkar T. Venkatasubramanian & Ors.*', reported in 2023 SCC OnLine NCLAT 283, the ground raised in the appeal are not covered by any of the grounds as contemplated in the 5 Member Bench Judgment.

We do not find any merit in the appeal. The appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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