

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
NEW DELHI  
COMPANY APPELLATE JURISDICTION**

**Company Appeal (AT) (Insolvency) No. 63 of 2017**

**(arising out of Order dated 12<sup>th</sup> April, 2017 passed by National Company Law Tribunal, Kolkata Bench, Kolkata in Company Petition No. 186/2017.)**

**M/s. R.G. Shaw & Sons Private  
Limited & Anr. ... Appellants**  
v.

**M/s. Naviplast Traders Private  
Limited & Ors. .... Respondent**

Present:

**For Appellant:-** Mr Alok Dhir, Ms Varsha Banerjee, Mr Milan Singh Negi and Mr Kunal Godhwani, Advocates.

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by Appellant ('corporate debtor') & another against order dated 12<sup>th</sup> April, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, in Company Petition No. 186/2017. By the

impugned order, the application preferred by Respondents ('financial creditor') under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as I&B Code) has been admitted, moratorium has been declared, Insolvency Resolution Professional has been appointed and directions has been issued to proceed in terms of the provisions of the I&B Code.

2. Before the Adjudicating Authority the Appellant ('corporate debtor') took plea that the Respondent ('financial creditor') has not come with clean hands and have suppressed the facts that they have initiated proceeding under Section 138 of the Negotiable Instruments Act, 1881 on account of dishonor of cheque.

3. We have heard Ld. Counsel for the parties and perused the order. We agree with the Adjudicating Authority that proceeding under Section 138 of the Negotiable Instruments Act was initiated due to dishonor of cheque and the same cannot be a ground to reject the application under Section 7 of the I&B Code, there being debt and default. The Appellant while referring to letters, money receipts, demand promissory note, other relevant documents, including cheques have taken plea that they have been shown as security towards loan amount paid on different dates as detailed in the appeal. According to the Appellants, pursuant to oral agreement between the parties, the loan amount has been taken

and there is no stipulation of any specific date of re-payment. However, it is accepted that payment is due to the 'financial creditor' and cheques presented by the Appellants were dishonoured.

4. One of the plea taken by the Appellants is that pursuant to oral understanding/agreement between the parties, the terms for repayment of the loan was to be renewed/restructured with effect from 31.3.17 and therefore the question of default in making repayment does not arise. However, in absence of any such 'agreement', no such plea can be accepted.

5. Ld. Counsel of the Appellants submitted that Form 1 was not in accordance with the provisions of Section 7 and Rules framed thereunder. But such submission cannot be accepted as we find that application under Section 7 was filed by authorized representative of 'financial creditor', namely, Mr. Chinmoy Guchhait, Director.

6. Next it was contended that particulars of security etc., were to be given in Part V of Form No. 1, including order of court, if any, but it has not been shown. However, such submission cannot be accepted as the particulars as mentioned therein are not applicable in the present case. For example, if no order has been

passed by any Tribunal or Arbitration Panel or any suit is pending, the question of giving details of such case does not arise. The 'financial creditor' rightly mentioned the word 'not applicable' against the relevant column.

7. As we find no illegality in the impugned order and the application preferred by Respondents ('financial creditors') being in order and complete, the question of interference with the impugned order dated 12<sup>th</sup> April, 2017 does not arise. In absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

**(Mr. Balvinder Singh)**  
**Member (Technical)**

**(Justice S.J. Mukhopadhaya)**  
**Chairperson**

**NEW DELHI**

**20<sup>th</sup> September, 2017**

*rc*