

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Comp App (AT) (CH) (Ins.) No. 54 / 2023

(Under Section 61(1) of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned order dated 25.08.2022 in
IA(IBC)/601(CHE)/2022 in CP (IB) No./1264/IB/2018, passed by the
‘Adjudicating Authority’ (‘National Company Law Tribunal’,
Court - I, Chennai)

In the matter of:

M/s. Banwari Lal Sharma

No. D-205, Cafee Street,

Bidhanagar District,

Durgapur, Burdwan West Bengal

.... Appellant

v.

CA.S. Palaniappan

Liquidator,

M/s SLO Industries Limited,

B5, Patteshwar Park North Block,

Dr. Ramasamy Layout,

Velandipalayam, Coimbatore - 641 025

.... Respondent No. 1

CS C Ramasubramaniam

3 B1, 3rd Floor, Gaiety Palace,

No 1 L, Blackers Road,

Mount Road,

Chennai - 600 002

**.... Respondent No. 2 /
Resolution Professional**

Present :

For Appellant : Mr. P.H. Arvindh Pandian, Senior Advocate
For Ms. Jayanthi K Shah

For Respondent No. 2 / : Ms. D. Pavithra, Advocate
Resolution Professional

J U D G M E N T

(Physical Mode)

05.04.2023:

Justice M. Venugopal, Member (Judicial) :

Heard both sides.

2. The Appellant has preferred the instant Comp. App (AT) (CH) (INS.) No. 54 / 2023 in IA(IBC)/601(CHE)/2022 in CP/1264/IB/2018, on being dissatisfied with the 'Impugned Order', dated 25.08.2022 in CP/1264/IB/2018, passed by the 'Adjudicating Authority', National Company Law Tribunal, Special Bench, Court – I, Chennai.

3. Earlier, the 'Adjudicating Authority' / 'Tribunal', while passing the 'Impugned Order', dated 25.08.2022, in IA(IBC)/601(CHE)/2022 in CP/1264/IB/2018, as follows:

“This Tribunal vide its Order dated 20.06.2022 had directed the Applicant to file the amended Application in IA/596/CHE/2022 and IA/601/2022 within seven days and the matter was posted to 21.07.2022 for further hearing.

When the matter was called today, it is confirmed that the Applicant has not complied with the Order of this Tribunal dated 20.06.2022 till date, for filing the amended application.’’

and consequently, ‘dismissed’, the said ‘Application’.

4. The Learned Counsel for the Appellant takes an emphatic stand that the ‘Adjudicating Authority’ / ‘Tribunal’, while passing the main ‘Impugned Order’, dated 25.08.2022 in IA(IBC)/601(CHE)/2022 in CP/1264/IB/2018, had not provided an opportunity to explain the facts as to why the ‘2nd Respondent / Resolution Professional’, was a ‘necessary Party’.

5. Added further, it is pointed out on behalf of the Appellant that the ‘Adjudicating Authority’, ought to have summoned the ‘Resolution Professional’, for not paying the ‘Corporate Insolvency Resolution Process costs’, for a period of nearly eight months to the ‘Appellant’, during the ‘CIRP’ period and later, the Company, had undergone ‘Liquidation’.

6. Per contra, it is the submission of the Learned Counsel appearing for the 2nd Respondent that the ‘2nd Respondent / Resolution Professional’, need not be dragged into the ‘Proceedings’, before the ‘Adjudicating Authority’, because of the latent and patent fact that all the documents were handed over to the ‘Liquidator’, and the ‘inclusion’ / ‘arraying’ / ‘adding’ of the Resolution Professional, will be only an exercise in ‘Futility’.

7. This 'Tribunal', has heard the Learned Counsels appearing for the respective 'Parties', and noticed their submissions.

8. On a careful perusal of the Impugned Order dated 25.08.2022 in IA(IBC)/601(CHE)/2022 in CP/1264/IB/2018, on the file of the 'Adjudicating Authority', 'National Company Law Tribunal', Special Bench, Court – I, Chennai, this 'Tribunal', is of the considered view that, though the Learned Counsels appearing for the 'Parties', were present, nothing is made mention of or recorded in the 'Impugned Order', as to whether the Learned Counsels, had prayed for an 'opportunity', to explain the necessary facts having provided to them.

9. Suffice it, for this 'Tribunal', to make a pertinent mention that the 'Impugned Order', is conspicuously silent, on this aspect.

10. In this regard, it is not out of place, for this 'Tribunal', to aptly points out the Judgment of the Hon'ble Supreme Court of India, dated 16.07.2003 in Central Bank of India v. Vrajlal Kapurchand Gandhi & Anr. (vide Civil Appeal No. 4634 of 2003), wherein, it is observed that *“Statements of fact as to what transpired at the hearing recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have*

been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to cull the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to a party to contend before this Court to the contrary. This Court cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy and judicial decorum do not permit it. Matters of judicial record in that sense are unquestionable. However, the Court can pass appropriate orders if a party moves it contending that the order has not correctly reflected happenings in Court.’’

11. To be noted, that a ‘Reasoned Order’, will have an ‘appearance of justice’. In any ‘Order’, ‘Reasons’, one way or the other, ascribed by the ‘Tribunal’ / ‘Adjudicating Authority’ / ‘Competent Court of Law’, will be its ‘Heart’ and ‘Soul’, and so to say a ‘Jewel’ in a ‘Crown’. An ‘Unreasoned Order’, will have an ‘appearance of injustice’, being meted out to the ‘Affected Party’, because of the fact that the concerned ‘Party’, is prejudicially and substantially affected. However, even an ‘unreasoned order’, may be ‘valid’, from the view point of the person, who got a ‘favourable order’.

12. It is an 'axiomatic principle in Law', that the 'Tribunal' / an 'Appellate Tribunal', are guided by the 'Principles of Nature Justice', notwithstanding the fact that it can regulate its own procedure, as it deems fit and proper. However, the 'Tribunal' (Adjudicating Authority), under Section 5 (1) (a) of the I & B Code, 2016 - 408 of the Companies Act, 2013 and an 'Appellate Tribunal' ('NCLAT'), as per Section 410 of the Companies Act, 2013, are very much required and guided to adhere to the 'Principles of Natural Justice', in terms of ingredients of Section 421 (4) of the Companies Act, 2013, and as per Rule 34 of the NCLT Rules, 2016.

13. To put it differently, the 'Principle' of 'Audi Alteram Partem', has been negated, as seen from the 'Impugned Order'. On this simple ground alone, this 'Tribunal', without delving deep into the merits of the matter nor expressing any opinion, one way or the other simpliciter, at this juncture, is inclined to 'set aside', the 'Impugned Order', dated 25.08.2022 in IA(IBC)/601(CHE)/2022 in CP/1264/IB/2018 and 'allows', the 'Comp. App (AT) (CH) (INS.) No. 54 / 2023', in furtherance of 'Substantial Cause of Justice'. No costs.

14. In fine, the 'Impugned Order', dated 25.08.2022 in CP/1264/IB/2018, passed by the 'Adjudicating Authority', National Company Law Tribunal,

Special Bench, Court – I, Chennai, is 'set aside', by this 'Tribunal', ofcourse for the reasons assigned in this 'Appeal'.

15. The matter is remitted back to the 'Adjudicating Authority', who shall restore the IA(IBC)/601(CHE)/2022 in CP/1264/IB/2018 to its file and after restoration of the said 'Application', and taking it on file, is to pass an 'reasoned / speaking order', 'De novo', both on, 'qualitative and quantitative term(s)', by advertng to the 'Arguments' / 'Factual' and 'Legal' pleas, raised on behalf of the 'Parties', through their Learned Counsels, and in this regard, the 'Adjudicating Authority' / 'Tribunal', shall provide an 'opportunity', by adhering to the 'Principles of Natural Justice', and the 'Parties', are to avail the same. The said '**Final Order**', shall be passed **within three weeks**, from the date of passing of this 'Order', from today, by this 'Tribunal', in this 'Appeal', and the 'said order', shall be passed, ofcourse, uninfluenced and untrammelled with any of the observations, made by this 'Tribunal', in a 'Fair', 'Just', 'Dispassionate' manner and in the manner known to 'Law' and in accordance with 'Law'.

Before parting with the case, this 'Tribunal', makes it lucidly quite clear, that it is open to the Learned Counsels, appearing for the 'Parties', to raise all 'factual and legal pleas', including the similar orders, passed by the very same 'Adjudicating Authority' / 'Tribunal', or any other 'Case Laws', as

the case may be, that shall be taken into consideration, by the
`Adjudicating Authority' / `Tribunal', for the purpose of arriving at a fresh
decision (`Applications', which are reserved for Orders').

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

SR / TM