

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

Company Appeal (AT) (Insolvency) No. 359 of 2020

IN THE MATTER OF:

Rajendra Mulchand Verma & Anr.

...Appellants

Versus

K.L.J. Resources Ltd. & Anr.

...Respondents

Present:

For Appellant:

Mr. C. George Thomas, Advocate

For Respondent:

Ms. Deepali Upadhyaya, Advocate

O R D E R
(Virtual Mode)

20.07.2022: This appeal is directed against the order dated 20.01.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai) in M.A 3564 of 2019 (Contempt Petition) in C.P. (IB) 1084/(MB)/2019.

Counsel for the Appellant has submitted that the Respondent No. 1 had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') against the Appellant. The said application filed for an amount of Rs. 10.92 Crores was assigned CP (IB) No. 1084/MB/2019 by the office of the Adjudicating Authority. During the proceedings, the parties had entered into a settlement on 18.09.2019 which has been appended with this record as Annexure A-2.

On 18.09.2019 the Adjudicating Authority had passed the following order:

"C.P. (IB)-1084(MB)/2019

Ld. Counsel for the Financial Creditor sought leave of the Court for filing consent term. Prayer is allowed. Consent term is taken on record. Further request was made by the counsel for withdrawing the petition.

The Petition is dismissed as withdrawn with liberty to file a fresh petition in case of the breach of consent terms.”

Thereafter, the Respondent (K.L.J Resources Ltd.) alongwith another party filed a Contempt Petition bearing Misc. Application No. 3564 of 2019 for the alleged breach of consent term. The Contempt Petition is on record as Annexure A-8. In the said Contempt Petition, the Adjudicating Authority had passed the following order on 20.01.2020:

“M.A 3564/2019 in C.P. (IB) 1084/(MB)/2019

This is a fit case where the applicant should have gone straight to police and file an FIR as the same is a cognizable offence.

List the matter for further consideration on 3.2.2020.”

Assailing the validity of the impugned order, Counsel for the Appellant has submitted that once the main petition was dismissed as withdrawn and the liberty was granted to the Respondent (Applicant before the Adjudicating Authority) to file a fresh petition in case of breach of consent terms, the filing of Contempt Petition was totally unwarranted.

On the other hand, Counsel for the Respondent has strongly supported the order dated 20.01.2020 of the Adjudicating Authority and submitted that there is no error in the said order which requires any interference.

We have heard counsel for the parties and perused the record.

The question that arises for our consideration is as to whether in terms of the order dated 18.09.2019 (Annexure A-3), the Respondent herein had the jurisdiction to prefer the Contempt Petition instead of filing a fresh application in terms of the Section 7 of the Code?

To our mind, the approach of the Respondent is totally fallacious as it did not understand the order dated 18.09.2019 (Annexure A-3) of the Adjudicating Authority in which, while passing the order of dismissal as withdrawn, the Adjudicating Authority had given the liberty to it to file a fresh petition in case of breach of consent terms. Instead of filing a fresh petition under Section 7 of the Code, on the pretext that there was a breach of consent of terms, the Contempt Petition was filed which is totally uncalled for and unwarranted.

Thus, while we are holding that the Contempt Petition was not maintainable at all as it has been filed while misunderstanding the order dated 18.09.2019 (Annexure A-3) the Adjudicating Authority was to consider as to whether the order passed by the Adjudicating Authority has been violated or not but the Adjudicating Authority do not have the jurisdiction to direct the party to the lis to get the FIR registered as has been done in the present case.

Thus, in view of the facts and circumstances, the present appeal succeeds and the impugned order is hereby set aside.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)