

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

Company Appeal (AT) (Insolvency) No. 280 of 2022

IN THE MATTER OF:

Sana Realtors Pvt. Ltd.

...Appellant

Versus

Udeeksha Nangia

...Respondent

Present:

For Appellant: Mr. Arvind Varma, Sr. Advocate with Ms. Roohina Dua, Ms. Mansi Gupta and Mr. Abhimanyu Bhandari, Advocates.

For Respondent: Mr. Dheeraj Gupta and Mr. Kabir Harpalani, Advocates.

ORDER
(Virtual Mode)

06.05.2022: Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent.

2. This Appeal has been filed against the order dated 04.03.2022 by which order the Adjudicating Authority has rejected I.A. No. 923 of 2022 filed by the Appellant for recall of order dated 08.02.2022.

3. On 08.02.2022 following order was passed by the Adjudicating Authority:

“ORDER

Ld. Counsel for the applicant states that after the notice was issued in 2019, none has filed any reply for Corporate Debtor.

Cont'd.../

*In view of the same, the Corporate Debtor is to be proceeded **ex-parte**.*

List for arguments on 04.03.2022.”

4. Subsequent to the order dated 08.02.2022, an application came to be filed on 23.02.2022 for recall of the order by I.A. No. 923 of 2022. It so happened, on the date when application came for hearing before the Adjudicating Authority there was certain interjection on behalf of the counsel appearing for the Applicant (Appellant herein) due to which the Adjudicating Authority rejected the application without entering into the merits of the application.

5. When the matter came before us, this Appellate Tribunal passed following order on 16.03.2022:

“ORDER
(Virtual Mode)

16.03.2022: Learned Counsel for the Appellant submits that the Counsel who appeared before the Adjudicating Authority on 04th March, 2022 is tendering apology and it was just due to enthusiasm that certain submissions were made for which the Appellant expresses its apology.

2. We are of the view that it shall be appropriate if an Affidavit to that effect be placed before the Adjudicating Authority in the proceedings in question, copy of which also be brought on record in this Appeal before the next date.

*List this Appeal on **28th March, 2022.**”*

6. In pursuance to our order dated 16.03.2022, an affidavit was filed by learned counsel for the Appellant before the Adjudicating Authority on 16.03.2022 tendering apology.

7. Reply has also been filed in the Appeal by the Respondent to which Rejoinder has been filed.

8. Learned counsel for the Appellant submits that although it is true that time was granted to the Respondent, who is Appellant before us, to file reply but the proceedings were not proceeded with and only on 13.12.2021 the order was passed by the Adjudicating Authority asking Petitioner (Respondent herein) to file an affidavit regarding delay in proceeding. It is submitted that again on 15.12.2021 following order was passed and thereafter 08.02.2022 was the date fixed on which date decision was taken to proceed ex-parte:

“ORDER

At request of Ld. Counsel for the petitioner, list the matter for physical hearing on 08.02.2022.”

9. Learned counsel for the Respondent submits that the Respondent (Appellant herein) was well aware of the proceedings and choose not to appear on 08.02.2022 and choose not to file Reply, whereas, they were allowed time in 2019 itself.

10. We have considered submissions of learned counsel for the parties and perused the record.

11. We have noticed from the proceedings on 13.12.2021 that Adjudicating Authority asked the Applicant/Petitioner to explain the delay by filing affidavit. In pursuance of the order affidavit was filed. On next date i.e. on 15.12.2021, proceedings were adjourned on request of learned counsel for the Petitioner and 08.02.2022 was the date fixed, on which date decision was taken to proceed ex-parte. In the fact of the present case, ends of justice be served in giving one more opportunity to the Appellant to file reply. Counsel for the Respondent submits that next date of hearing in the matter has been fixed for 10.05.2022. Learned counsel for the Appellant submits that he shall file his Reply by 09.05.2022 i.e. before the date fixed. Let Appellant file Reply on or before 09.05.2022, which may be taken on record and the Adjudicating Authority may proceed further in accordance with law. In result, we set aside the order dated 04.03.2022 and Appeal is disposed as above. In the event, no reply is filed by the Appellant on or before 09.05.2022, right to file reply shall be closed.

[Justice Ashok Bhushan]
Chairperson

[Shreesha Merla]
Member (Technical)

Archana/nn