

NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS) No. 89 of 2021

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

Arising out of the Impugned Order dated 01.02.2021 passed in IBA/54/2020

and IBA/59/2020 passed by the Adjudicating Authority,

(National Company Law Tribunal, Division Bench [Court-1] Chennai Bench)

In the matter of:

**FIPOLA RETAIL (INDIA) PRIVATE
LIMITED**

...Appellant

Having office at:

Office No.2B, Door No.AC5,

2nd Floor, 2nd Avenue,

Anna Nagar, Chennai -600040

Represented by Mr. Sushil Kanugolu

V

M2N INTERIORS

...Respondent

Having office at:

Door No.6, Shop No.1,

Venugopal Street, Mogappair,

Chennai – 600037.

Present:

**For Appellant : Mr. Rohan Rajasekaran, Advocate
For Mr. N. V. Prakash, Advocate**

**For Respondent : Mr. Manivannan J,
Mr. M. Govindaraju, Advocates**

Coram : Mr. Justice M. Venugopal Member (J)
Mr. Kanthi Narahari Member (T)

JUDGMENT

(VIRTUAL MODE)

Per: Kanthi Narahari Member (T)

Brief facts :-

(1) The present Appeal arises against the Common Order dated 01.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court-I, Chennai) in IBA/54/2020 and IBA/59/2020 whereby the Adjudicating Authority by the said Order taken the petition on record with a direction to the Corporate Debtor (the Appellant herein) to file its Reply to the petition within the period of three weeks' from 01.02.2021. Aggrieved by the said Order, the Appellant preferred the present Appeal on the ground that the Adjudicating Authority has traversed beyond its powers and jurisdiction by reviewing its own Order dated 25.02.2020.

Appellant's Submissions :-

(2) The Learned Counsel for the Appellant also raised the ground that the Adjudicating Authority had noticed that the cause title of the petition filed by the Respondent (Operational Creditor) had mentioned the name of the Proprietorship Concern instead the name of Proprietor. The Learned Adjudicating Authority

returned the Application for amending the cause title and removal of defects and refiling the same within seven days from 25.02.2020 in terms of proviso to Section 9(5)(ii) of the Insolvency and Bankruptcy Code 2016 (“I & B Code 2016”).

(3) The Learned Counsel for the Appellant submitted that the matter was not Listed thereafter due to Covid 19 Lockdown. Thereafter, the Ld. Adjudicating Authority had granted time for compliance and the matter was posted to 07.10.2020. Having accepted the Order of the Ld. Adjudicating Authority dated 25.02.2020 and sought additional time for compliance, the Respondent is estopped from taking a contradictory stand and thereafter claiming that compliance of Order dated 25.02.2020 was not necessary. If the Respondent was aggrieved by the Order dated 25.02.2020 his only remedy would have been by way of an Appeal under Section 61(1) of the I & B Code 2016 and not by seeking review of the Order dated 25.02.2020 by merely filing a Memo dated 05.10.2020 and praying for dispensing with the compliance as ordered vide Order dated 25.02.2020.

Respondent's Submissions :-

(4) The Learned Counsel for the Respondent filed his Reply to this Appeal and submitted that the hearings held on 25.02.2020 and 17.09.2020, the Hon'ble Adjudicating Authority observed that the Impugned Application was filed in the name of Sole Proprietorship Concern and in view of Section 3(23) of the IBC 2016 only a person as defined therein can approach the Adjudicating Authority. In view

of the above, the Hon'ble Adjudicating Authority please to grant an opportunity to the Respondent herein to amend the cause title suitably.

(5) The Learned Counsel for the Respondent submitted that this Tribunal in the matter of Neeta Saha Vs Mr. Ram Niwas Gupta in Company Appeal (AT) (Insolvency) No. 321 of 2020, the Hon'ble NCLAT observed that Section 2 of IBC provides that the provisions of the Code apply, inter-alia to Proprietorship Firms and further the definition of person in Section 3(23) of IBC is an inclusive definition.

(6) The Learned Counsel for the Respondent submitted that relying upon the Judgment of this Hon'ble Tribunal supra, the Application filed by the Sole Proprietorship Firms under the provisions of Section 7 and 9 of the I & B Code to initiate CIRP against the Corporate Debtor are flawlessly maintainable and relying on the said Order, the Respondent herein has filed a Memo dated 05.10.2020 before the Hon'ble Adjudicating Authority stating that the Application does not require any correction or amendment in view of the Judgment of the Hon'ble Appellate Tribunal. Accordingly, the Hon'ble Adjudicating Authority passed the Order dated 01.02.2021 which is impugned in this Appeal. The Learned Counsel submitted that the Appeal is devoid of merits and requested the Bench to dismiss the same.

Appraisal/Analysis :-

(7) Heard the Learned Counsels appeared for the parties, perused the pleadings, documents and the judgment relied upon by the parties. It is an admitted fact that the Respondent i.e., M/s. M2N Interiors represented by its Sole Proprietor Mr. M. Murali filed an Application under Section 9 before the Adjudicating Authority (NCLT, Chennai Bench, Chennai). The Adjudicating Authority vide its Order dated 25.02.2020 passed the following Order.

“Learned Counsel for the Petitioner is present. It is seen from the cause title that the Petitioner seems to be a sole proprietary concern. However, in view of the section 3(23) of the IBC, 2016 only a person as defined therein can approach this Tribunal and hence an opportunity is given to the sole proprietor as a petitioner to approach before this Tribunal afresh. For this purpose an opportunity is given to the Petitioner to amend the cause title by a week to cure the defect. Post the matter on 23.03.2020.”

(8) The Ld. Adjudicating Authority was of the view that as per Section 3(23) of the IBC 2016 only a person as defined therein can approach the NCLT and an opportunity was given to the Sole Proprietor as a Petitioner/Applicant as the case may be to approach the Adjudicating Authority. The Adjudicating Authority also directed the Applicant therein to amend the cause title to cure the

defect. Further, vide Order dated 17.09.2020, the Ld. Adjudicating Authority granted ten days' time for compliance of the Order dated 25.02.2020 in view of the Pandemic due to Covid- 19.

(9) The Respondent herein filed a Memo dated 05.10.2020 [enclosed at page 48 of Appeal Paper Book(s)] relying upon the Judgment of this Tribunal in-re “Neeta Saha” and prayed the NCLT to dispense with the compliance of amendment in the cause title as directed by the Adjudicating Authority vide Order dated 25.02.2020.

(10) The Ld. Adjudicating Authority taking into consideration the decision of this ‘Tribunal’ passed the Order on 01.02.2021 enclosed at Page 29 of the Appeal Paper Book(s). The Ld. Adjudicating Authority observed as under-

“In so far as this Petition is concerned, the Petitioner as reflected in the cause title contains both the name of the Sole Proprietor as well as the name of the Sole Proprietary concern and hence the Petition can be taken on record.”

(11) The ‘Adjudicating Authority’ further directed the ‘Appellant’ to file its Reply to the Application. From the perusal of the Application it is seen that the Proprietorship name i.e., M/s. M2N Interiors is represented by its Sole Proprietor

Mr. M. Murali as depicted in cause title, therefore, taking into consideration that the Proprietorship Firm represented by its Sole Proprietor by reflecting the name of sole proprietor itself would show that the Application is being represented by the Proprietorship Firm as well as the Proprietor, duly represented by its Sole Proprietor Mr. M. Murali. In this regard, as decided by this Tribunal Section 2 of I & B Code 2016 applies to Partnership Firms and Proprietorship Firms. As per Sub Clause (f) of Section 2, the person defines in Sub Section 23 of Section 3 includes a Partnership Firm. Therefore, relying upon the decision of this Tribunal there is no error apparent in the Impugned Order, this Tribunal in Neeta Saha supra held at Para 14 which reads as under.

“14. Even the judgment shows the name of Respondent No.1 as the Operational Creditor in his personal name. The Adjudicating Authority in effect has allowed the defects to be cured. The objection on this count does not survive. We also note that Section 2 of IBC provides that the provisions of the Code apply, inter alia, to “proprietorship firms”. Further the definition of “person” in Section 3(23) of IBC is inclusive definition.”

(12) Taking into consideration of the aspects and relying upon the decision this Tribunal is of the view that the Application filed by the Respondent i.e., M/s. M2N Interiors, a Proprietorship Firm is maintainable and accordingly this Tribunal

does not find any illegality in the Common Order passed by the Adjudicating Authority dated 01.02.2021.

(13) The Appeal is devoid of merits and liable to be dismissed. Accordingly, the same is dismissed. No Orders as to costs.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Chennai
01.09.2021
GS