NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO. 289 OF 2022

(Arising out of the Order dated 15th February, 2022 passed by the National Company Law Tribunal, New Delhi, Court-III, in IB-87/ND/2022).

IN THE MATTER OF:

Premjit Singh Chadha
(Personal Guarantor of Corporate Debtor – ANG Industries Limited)
S/o Kulbhushan Singh Chadha
C 501, Catriona Apartment,
Gurgaon 122001. **...Appellant**

Versus

Bank of Baroda
Stressed Asset Management Branch,
4th Floor, Rajendra Bhawan, Rajendra Place,
New Delhi – 110008.
Through the Resolution Professional Mr. Deepak Mittal
R-4/39, Raj Nagar,
Ghaziabad – 201002
Email Id: reshmaandco@gmail.com **...Respondent**

For Appellant: **Mr. Simarpal Singh Sawhney, Mr. Sidhant Juyal & Mr. Akhilesh Talluri, Advocates.**

For Respondent: **Mr. Vivek Sinha, Advocate.**

J U D G E M E N T

[Per: Shreesha Merla, Member (T)]

1. This Appeal has been preferred against the Impugned Order dated 15/02/2022 passed by the Learned Adjudicating Authority (National Company Law Tribunal New Delhi, Bench – III) in (IB)-87(ND)/2022, declaring an Interim Moratorium in terms of Section 96 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code'). The

Appellant is the Personal Guarantor of M/s. ANG Companies Ltd. which is currently undergoing Liquidation.

2. It is the case of the Appellant Counsel that when the process of Liquidation of the 'Corporate Debtor' was underway, the Appellant had received summons dated 15/10/2020 issued by the DRT Tribunal, Delhi filed by the Respondent Bank for recovery of a sum of Rs.55,54,37,926/- together with interest. During the pendency of the said Proceedings before DRT, the Respondent Bank also issued Demand Notice dated 06/10/2021 under form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to 'Corporate Debtors') Rules, 2019 claiming a total debt of Rs.44,94,73,343.31/- stated to be outstanding as on 31/10/2019. It is strenuously argued by the Learned Counsel that none of the necessary documents as mandated under Rule 7(1) were appended alongwith the Demand Notice.

3. It is submitted that the Appellant had replied on 24/10/21 stating that the Bank had failed to attach the necessary documents and hence the Demand Notice is rendered incomplete. The Respondent Bank replied vide letter dated 24/11/2021 but once again did not append the requisite documents. Learned Counsel for the Appellant vehemently argued that the postal receipt dated 10/01/2022 specifies the weight of the package/envelope to be 186 grams and a bare perusal of the Application shows that there are more than 47 documents which could not have been a part of the package weighing 186 grams.

4. Thereafter an Application under Section 95 of the Code dated 03/01/2022 was filed by the Bank initiating Personal Insolvency against the Appellant. The Learned Counsel contended that the Adjudicating Authority has failed to ensure the issuance of limited Notice to the Application as contemplated under Section 95(1) of the Code. It is strenuously argued that in accordance with Section 60 (2) of the Code the said Application could only be heard by Bench No. VI of the NCLT, as the Liquidation Proceedings of the 'Corporate Debtor' were pending before that Bench.

5. Learned Counsel for the Appellant placed reliance on these two Judgements in support of his case:

- *'AGI Logistics INC & Anr. Vs. Mr. Sher Jang Bhadur & Anr.', CS(OS) 1314/2009.*
- *'Neeraj Jain Vs. Cloudwalker Streaming Technologies Private Limited and Ors.', Company Appeal (AT) (Insolvency) No. 1354 of 2019.*

6. It is the case of the Respondent Bank that the Appellant was served with the complete set of the Application under Section 95 of the Code on 12/01/2022 which is also duly served as shown in the Tracking Report.

7. Learned Counsel for the Respondent Bank submitted that the Demand Notice dated 06/10/2021 calling upon the Appellant to pay an amount of Rs.44,94,73,343.31/- together with the interest was served upon them as is evidenced from the Tracking Report dated 12/10/2021. Subsequent to the Reply by the Appellant that some of the documents were not annexed, though was a baseless allegation, the Respondent Bank had once again sent all the annexures vide their response dated 24/11/2021. It is also submitted that the Appellant had appeared on the first date of hearing of the Application and hence cannot raise that limited Notice was not issued and that they were unaware of the Proceedings. The Appellant appeared but did not raise any objections with respect to the matter of Liquidation Proceedings of the 'Corporate Debtor', being pending before Bench No. VI of the NCLT. Further the Appellant was served with a complete set of the Application under Section 95 of the Code on 12/01/2022 which is one month prior to the date of the hearing of the Application.

8. The main issue which arises in this Appeal is whether the Order of the Adjudicating Authority has to be set aside on the ground that limited Notice under Section 95(1) of the Code was not issued to the Personal Guarantor seeking his appearance and whether the Demand Notice issued by the Respondent Bank is defective.

9. This Tribunal in *'Mr. Ravi Ajeet Kulkarni Vs. State Bank of India', Company Appeal (AT) (Ins) No. 316 of 2021* held that a 'Corporate Debtor' is entitled for limited Notice by the Adjudicating Authority so that the Personal Guarantor is aware of the Proceedings. The relevant paras are reproduced as hereunder:

> *"24. Section 95(5) requires the Creditor to provide copy of the application under sub-section (1) to the Debtor. This section needs to be read with Rule 3(1)(g) reproduced above. It is evident from reading the Section alongwith the Rule that what Creditor has to serve is copy of the application "made under sub-section (1)" to the Debtor. Reading Rule 7(2) with Rule 3 shows that the application filed under sub-section (1) of Section 95 shall be submitted in „Form C" and that the Creditor will serve forthwith "a copy of the application" to the Guarantor and the Corporate Debtor for whom the Guarantor is a Personal Guarantor. Thus, what has to be served is the copy of application which has been "submitted". What is*

contemplated is that the application in Form C should be "submitted" and then the Creditor should serve forthwith a copy of the application to the Guarantor and the Corporate Debtor for whom the Guarantor is a Personal Guarantor. The procedure thus prescribed will give the Personal Guarantor notice of the application already filed before the Adjudicating Authority. Section 95(5) requires Creditor to provided copy of the application "made under sub-section (1)" to the Debtor. Thus, serving advance copy is not contemplated.

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"44. In substance, once the application is "filed" (as per Section 95, 96 read with Rule 10) the Adjudicating Authority has to act on it, and following principles of natural justice, give limited notice to Personal Guarantor to appear referring to the Interim Moratorium that has commenced as per terms of Section 96. Then the next stage is of appointing Resolution Professional as per Section 97 read with Rules and Regulations. Third stage will be Resolution Professional acting in terms of Section 99 and submitting Report. At the fourth stage comes in adjudication of the application under Section 100 which ought to be decided by giving hearing to parties keeping in view Application, evidence collected and report under Section 99."

10. It is the main case of the Appellant that the limited Notice contemplated under Section 95(1) of the Code was never served upon them. The material on record shows that the Personal Guarantor was represented on that date and therefore it cannot be said that the Appellant was not aware of the proceedings. The object behind the issuance of the limited Notice to the Personal Guarantor is to appear before the Adjudicating Authority following the Principle of Natural Justice. The documentary evidence on record establishes that the Demand Notice dated 06/10/2021 was received by the Appellant on 12/10/2021. It is the contention of the Learned Counsel for the Appellant that this Demand Notice, though received by them was *sans* the annexures and therefore is a defective one. The same was communicated to the Respondent Bank on 24/10/2021 and the Bank had once again sent another copy on 24/11/2021. Learned Counsel representing the Bank has submitted that though the allegation that the initial Demand Notice dated 06/10/2021 did not have the requisite enclosures, as a precautionary measure, all the documents were once again appended and sent to the Appellant vide Speed Post on 24/11/2021. Morever, a Demand Notice is only a preliminary Notice and the entire set of detailed Annexures are required to be appended to the Application which was done in the instant case. It is seen that the receipt of this letter is not disputed. Further we also note that the Application was admittedly served on the Appellant on 12/01/2022 together with all the annexures one month prior to the date of hearing and in the absence of any objections raised during this period of one month, we are of the earnest view that the Appellant cannot now state that they were clueless about the annexures or were oblivious of the proceedings. The ratio laid down by this Tribunal in ***'Chandresh Jajoo Vs. Siemens Financial Services Pvt. Ltd. & Anr.', Company Appeal (AT) (Ins) No. 284 of 2022,*** is squarely applicable to the facts of this case wherein it is observed that *'there was no reason to direct for issuance of any limited Notice to the Appellant as he was aware of the proceedings'*. Morever the stage of admission of the Application has not yet come and at that stage, the Appellant can raise all the objections before the Adjudicating Authority opposing the admission of the said Application. Needless to add, the Adjudicating Authority will consider the pleas and pass Orders under Section 100 in accordance with law. The Judgements relied upon by the Learned Counsel for the Appellant are not applicable to the facts of the attendant case.

11. Lastly, we address to the contention of the Learned Counsel for the Appellant that Section 95 Application cannot be adjudicated by Bench No. III of the NCLT since the Liquidation Proceedings of the 'Corporate Debtor' was Pending before Bench No. VI of the NCLT. It is not understood as to why the Appellant has not brought the same to the Notice of the Bench or exercise his right by filing an Application before the Principal Bench under Rule 16 of the NCLT Rules, 2016.

12. For all the aforenoted reasons, this Appeal fails and is accordingly dismissed. We observe that we have not expressed any opinion on the merits of the matter.

[Justice Ashok Bhushan]
Chairperson

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
27th May, 2022

Himanshu