

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

Company Appeal (AT) (Insolvency) No. 866 of 2023

IN THE MATTER OF:

Citadel Eco-Build Pvt. Ltd.

...Appellant

Versus

Biltech Building Elements Ltd.

...Respondents

Present:

For Appellant: Mr. Anuj Tiwari, Mr. Saurabh Kr. Mishra, Mr. Rahul Kumar, Advocates

For Respondent: Mr. Sujoy C Datta, Ms. Nishtha Khurana, Mr. Aarsheya Sharda, Ms. Mahima Shekhawat, Advocates

ORDER

13.07.2023: Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent.

2. This Appeal has been filed against the Order dated 20th June, 2023 by which I.A. No. 2590 of 2023 filed by the Appellant under Rule 49(2) has been rejected.

3. Learned Counsel for the Appellant submits that in the Company Petition, the Adjudicating Authority passed an order on 22.02.2023 by which Operational Creditor was directed to serve a copy of the petition to the Corporate Debtor and thereafter matter was fixed for 11th April, 2023 on which date due to paucity of time matter could not be heard and thereafter date was fixed 16th May, 2023. On 16th May, 2023, none appeared on behalf of Corporate Debtor and order was reserved after hearing the Operational Creditor. An I.A. was filed by the Corporate Debtor praying for recall of the

Order. The grounds which was taken in the Application were in paragraph 8 to 10. It was submitted that due to technical connectivity issue, Appellant could not make submissions and further Reply was filed on 10th April, 2023. Adjudicating Authority rejected the Application observing that neither the Corporate Debtor appeared nor filed the Reply.

4. Learned Counsel for the Respondent refuting the submissions of Learned Counsel for the Appellant submits that the submission of the Appellant that there was connectivity issue cannot be accepted since Application was filed after about one month and it is further submitted that Reply which was filed by the Appellant was in defect hence was rightly not considered.

5. We have considered the submissions of Learned Counsel for the parties and have perused the record.

6. The date on which the matter was reserved was the first date of actual hearing when the Adjudicating Authority directed the Operational Creditor to serve the copy of the petition to the Corporate Debtor. Corporate Debtor as per order of the Adjudicating Authority filed his reply on 10th April, 2023 as was pleaded in the Application. The Adjudicating Authority in the order impugned has noted that neither the Corporate Debtor appeared nor filed a Reply. Effect would be that Reply which was filed by the Corporate Debtor is not to be considered while delivering the order.

7. Learned counsel for the Respondent submitted that Reply was in defect. Even if the Reply was in defect, the Adjudicating Authority could have directed for removal of the defect and considered the Reply.

8. We thus are of the view that Appellant has made out a sufficient cause for recall of the Order which cause were not adverted to by the Adjudicating Authority in the impugned order. We are of the view that ends of justice will be served in setting aside the order dated 20th June, 2023 and directing the Adjudicating Authority to give at least one hearing date for both the parties and reply which was filed by the Appellant may also be taken into consideration while deciding the matter.

9. We record the submission of Learned Counsel for the Appellant that no adjournment shall be sought by the Appellant before the Adjudicating Authority.

With these directions, we dispose of the Appeal. Adjudicating Authority shall endeavour to dispose of the matter as early as possible.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Basant/nn