



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 561/2022

IN

CP (IB) No.664/MB-IV/2020

In the matter of

IA-561/2022

Lalit Palwe

... Applicant

V/s.

CA. Raghunath Sarangpani.

...Respondents

IN

CP (IB) No.664/MB-IV/2020

Under Section 7 of the IBC, 2016

In the matter of

Samta Nagari Sahakari Patsanstha Ltd.

...Original Applicant

V/s.

Creative Powertech Private Limited

...Corporate Debtor

Order Pronounced on: **09.06.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant:

None.

For the Respondents:

CA. Raghunath Sarangpani a/w
Adv. Seetalaxmi Swamy.



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ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Interlocutory Application IA-2947/2021 is filed on 13.12.2021 by Mr. Lalit Palwe (Applicant) CEO of M/s. Creative Powertech Pvt. Ltd., the Corporate Debtor, in CP/IB/No.664/MB/2020 seeking initiation of proceeding under Section 425 of the Companies Act,2013 against CA. Raghunath Sarangpani (Respondent), who is said to be 'Authorised Signatory' of Samta Nagari Sahakari Patsanstha Ltd. (the Financial Creditor), the Applicant in CP/IB/No.664/MB/2020, contending that the statement of Respondent "*no subsequent reply/submissions may be filed by you in this matter*" in email dated 17.01.2022 intimidates the Applicant, which tantamount to an attempt intending to interfere in the due course of justice; and for material suppression of facts in stating that *the provisions of the Usurious Loans Act, 1918 are inapplicable. Reliance is placed on the decision of the Hon'ble NCLAT Company Appeal (AT) (Insolvency) No.336/2017*, while the said decision of NCLAT was impugned by Hon'ble Supreme Court in Naveen Luthra Vs. Bell Finvest (India) Limited & Anr. Civil Appeal No.654 of 2019 wherein the issue of rate of interest and application of the Usurious Loans Act was kept open to be pressed before the NCLT.
2. The Respondent has filed reply dated 19.04.2022 stating that the contentions of the Applicant are frivolous and without any merit. The Applicant has filed a written submission dated 31.05.2022 and has placed reliance on various decisions of the Courts to support his prayer for initiation of proceeding u/s. 425 of the Companies Act,2013. The Applicant has also pleaded that it



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tantamount to threaten the Court and has relied upon the decision of Hon'ble Supreme Court in **Pritam Pal vs. High Court of MP, 1993 Supp (1) SCC 529**.

3. It has further been submitted vide reply dated 14.03.2023 that the email dated 17.01.2022 was addressed only with a view to clarify that the written submission faithfully reproduced the oral submissions made on behalf of the Petitioners and expression of a view on behalf of one party a litigation can hardly be said to be contemptuous. Accordingly, no interference or obstruction can be said to have been caused by merely stating the stage of proceedings. Further, the Hon'ble Supreme Court has not set-aside the decision in case of Naveen Luthra Vs. Bell Finvest (India) Limited, as per my understating. As regards production of new evidences to prove the fact of dismissal no prejudices cause to the proceedings.
4. This Bench heard the Counsel and perused the material available on record as well as decisions of Courts cited by both the parties to support their contentions.
 - 4.1. Section 425 of the Companies Act, 2013 reads as under:

“Power to punish for contempt. — The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), which shall have the effect subject to modifications that—

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal;

and



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(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf’.

4.2. This Bench finds that the statement “*no subsequent reply/submissions may be filed by you in this matter*” in the email communication dated 17.01.2022, cannot be said to tend to intimidate the Applicant and obstruct the Justice. On comprehensive reading of said communication, it emerges that the Respondents have only clarified that no additional argument has been made in the written submissions filed by him, hence, it does not warrant any subsequent reply/submissions on that particularly in the context that the Company Petition having been reserved for orders. The said communication does not prohibit of Bar, the Applicant to file any reply by the Applicant if he wish to. In the matter of **Sanjay Sodhi Vs. M/s Cinema Ventures Pvt. Ltd. (2023) ibclaw.in 251**, the Hon’ble NCLAT held that for initiating proceeding u/s 425 of the Companies Act, 2013 the question which needs to be considered is as to whether the act of the Respondent can be treated to be act of wilful disobedience.

4.3. This Bench finds that the issue for consideration before the Hon’ble NCLAT in case of *Naveen Luthra Vs. Bell Finvest (India) Limited & Anr. Company Appeal (AT) (Insolvency) No.336/2017* was “*whether the Adjudicating Authority can entertain or reject an application under Section 7 of the ‘I&B Code’ on the ground of “usurious and extortionate penal interest”?*” and the Hon’ble NCLAT held that “*the provisions of Sections 3 & 4 of the ‘Usurious Loans Act, 1918’ are not applicable to any of the proceeding under*



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Section 7 or 9 of the 'I&B Code'. Vide the said order, the Hon'ble NCLAT also decided in Company Appeal (AT) (Insolvency) No. 10 of 2018 holding that, the Adjudicating Authority having failed to notice that the 'Usurious Loans Act, 1918', is not applicable for initiation of 'Corporate Insolvency Resolution Process', we set aside the order dated 15th November, 2017, passed in the said appeal and remit the case to the Adjudicating Authority for hearing the application for admission after notice to the parties. This order was taken in Appeal before the Hon'ble Supreme Court and the Appeal was dismissed holding that it *will be open for the appellant to press the issue of rate of interest and application of the Usurious Loans Act, before the National Company Law Tribunal, if so advised.* On a combined reading of these orders, this Bench finds that issue in that case was whether the extortionate interest can form part of debt for consideration of application u/s. 7 of IBC in the light of Section 3 of *Usurious Loans Act, 1918*. Though this issue was decided by the Hon'ble NCLAT, but Hon'ble Supreme Court, without giving any opinion on this issue, permitted the Appellant to raise application of usurious loan Act before NCLT in remand proceedings. Accordingly, the Bench is of the considered view that Respondents reliance on NCLAT decision in case of Naveen Luthra (supra) was not misleading. In the matter of **Sanjeev Mahajan Vs. Indian Bank (Erstwhile Allahabad Bank) & Anr (2022) ibclaw.in 942**, the Hon'ble NCLAT dismissed the contempt application holding that there were certain difference of opinion regarding the interpretation of the order and views expressed in the CoC meetings regarding the interpretation of the Order dated 04.07.2022 cannot amount to any contempt.



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4.4. This Bench finds that the decision of Hon'ble Supreme court in the case of **Pritam Pal** (supra) found that the contemnor had moved a Contempt Petition u/s 16 of the Contempt of Courts Act, 1971 making some serious allegations against the two judges of the High Court, who dismissed his Writ Petition and also the Review Petition. The Hon'ble Supreme Court further held that “*The special feature of the procedure to be followed in a contempt proceeding being summary procedure to be followed in a contempt proceeding being summary procedure, which is recognised not only in India but also abroad, the caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself*”. This part of the decision “**that power should be used sparingly**” appears to have been consciously withheld by the applicant while pleading its case in this application. This Bench is of considered view that the applicant may not have been briefed the complete ratio of the decision by its legal Counsel, hence this bench does not take any offence in such suppression of important and vital ratio of this decision.

5. In view of the aforesaid discussion, this Bench is of the considered view that, the present IA-561/2022 deserves to be dismissed.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
09.06.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER(JUDICIAL)