

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1018 of 2021

(Arising out of Order dated 30.09.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in IA-3221/2021 in CP No. (IB)-456(ND)/2018)

IN THE MATTER OF:

1. Vikram Puri (Suspended Director)
2. Raman Puri (Suspended Director)
Both R/o 59 B, Lane C 5, Sainik Farms,
New Delhi – 10062. Appellants

Vs

1. Universal Buildwell Private Limited,
(Through Resolution Professional)
Having its office at 102, Antriksh Bhawan,
22, KG Marg, New Delhi – 110001.
2. Atul Kansal, Resolution Professional
Having its office at SCO-61, 3rd Floor,
Old Judicial Complex,
Above Kotak Mahindra Bank,
Civil Lines, Sector-15,
Gurugram, Haryana - 122001. ... Respondents

For Appellants: Mr. Abhijeet Sinha, Ms. Supriya Gole, Mr. Purav Middha, Mr. Ashish Middha, Advocates.

For Respondents: Mr. Swapnil Gupta, Advocate for RP.

J U D G M E N T

ASHOK BHUSHAN, J.

1. This Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (“Code” for short) has been filed against the order dated 30.09.2021

passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) rejecting the Application I.A 3221 of 2021 filed by the Appellant for cancellation of the Non-Bailable Warrants of Arrest.

2. An Application under Section 7 of the Code was filed by the Financial Creditor- Ms. Pallavi Joshi Bakhru against the Corporate Debtor on 18.04.2018. The Adjudicating Authority vide order dated 03.07.2018 admitted the Application under Section 7 and appointed Interim Resolution Professional. An Application CA No. 400/2018 was filed by the Resolution Professional before the Adjudicating Authority seeking direction to Suspended Board of Directors of the Corporate Debtor to supply documents as specified therein. The Appellant- Suspended Board of Directors of the Corporate Debtor did not co-operate with the Resolution Professional, hence, Application under Section 19(2) of the Code was filed by the Resolution Professional. By order dated 16.07.2021 passed by the Adjudicating Authority, Suspended Directors were directed to surrender before the Tribunal on 20.07.2021 and Non-Bailable Warrants were also issued. On 03.08.2021, Suspended Directors moved an Application for cancellation of the Non-Bailable Warrants which Application was dismissed by the Adjudicating Authority on 03.08.2021. By the same order, Suspended Board of Directors were again directed to surrender before the Registrar, NCLT on or before 06.08.2021 and they were also directed to handover all the documents. Since, Suspended Directors failed to surrender, on 11.08.2021, on the Application I.A- 3221 of 2021 filed by the Suspended Directors for exemption of appearance and surrender, the Adjudicating Authority on 11.08.2021 directed the Application to be listed with CA No. 400/2018. On 30.09.2021, Application I.A- 3221 of 2021 was

heard and rejected. The Adjudicating Authority in its impugned order gave following reasons for rejecting the Application:-

“Heard the Ld. Counsel appearing for the Applicant as well as the RP and perused the averments made in the application. On perusal of the order dated 11.08.2021, we notice that earlier the Non-Bailable Warrants of Arrest were issued and the Applicants were directed to appear before the Ld. Registrar. But as it appears from the report of the Ld. Registrar, the Suspended Board of Directors haven’t appeared before the Ld. Registrar. Ld. Registrar referred back the matter to this Bench.

By filing this IA, the Applicant has prayed for cancellation of Non-Bailable Warrants of Arrest. Since the Applicants have failed to comply with the directions of this Adjudicating Authority, we are not inclined to cancel the Non-Bailable Warrants of Arrest issued against the Applicants.

Accordingly, the prayer is hereby rejected and the IA is Dismissed.”

3. Aggrieved against the order dated 30.09.2021, this Appeal has been filed.

4. Shri Abhijeet Sinha, Learned Counsel appearing for the Appellants submits that in IBC proceedings, there is no occasion to issue a Non-Bailable Warrant. It was open for the Adjudicating Authority to proceed *ex parte* and pass appropriate order against the Suspended Directors but asking for personal presence of Suspended Directors was not required. It is submitted

that majority of documents as asked for by Resolution Professional have been supplied by the Appellants and their appearance and surrender was not necessary and their Application to cancel Non-Bailable Warrants has been wrongly rejected. The Adjudicating Authority does not have any jurisdiction to issue Non-Bailable Warrants.

5. Learned Counsel for the Appellants further submits that the Tribunal is bound to follow the principles of natural justice. It is submitted that impugned order which prejudicially affects the interest of the Appellants has been passed without a right of hearing. The Tribunal is not bound by procedures laid down under the Civil Procedure Code. It is further submitted that in event non-compliance with Section 19 of the Code, the defaulting party may be liable for punishment in terms of Section 70 of the Code but due to non-compliance, non-bailable warrant cannot be issued. It is submitted that the Tribunal is competent to enforce its order. However, there is no provision which requires that a person against whom enforcement is sought must be physically present or that his presence must be secured by issuance of Non-Bailable Warrant. Learned Counsel further submits that conditions upon which Non-Bailable Warrant can be issued are not satisfied.

6. Mr. Swapnil Gupta, Learned Counsel appearing for the Resolution Professional has refuted the submissions of the Counsel for the Appellants and submits that there is ample jurisdiction with Adjudicating Authority to enforce the attendance of any person in the proceeding. It is submitted that the Suspended Directors did not co-operate with the Resolution Professional nor supplied the documents asked for, only few documents have been supplied and Resolution Professional has to file Application under Section

19(2) of the Code praying for direction to Suspended Directors to co-operate and in spite of various notices issued to Suspended Directors, they did not appear. Hence, the Adjudicating Authority has left with no option and issued Non-Bailable Warrants.

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

8. The first question to be answered is as to whether the Adjudicating Authority while exercising jurisdiction under the Code have any jurisdiction to issue Non-Bailable Warrant against any person or party. We need to look into the relevant statutory Rules namely— ‘The National Company Law Appellate Tribunal Rules, 2016’.

9. Rule 77 which is contained in Part-XIII of the Rules provides for ‘Procedure for examination of witnesses, issue of Commissions’. Rule 77 is as follows:-

“77. Procedure for examination of witnesses, issue of Commissions.- The provisions of section 424 of the Act and relevant provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908 (5 of 1908), shall apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.”

10. The above Rule specifically provides that the provisions of Order XVI of the Code of Civil Procedure, 1908 shall apply in the matter of summoning and

enforcing attendance of any person. Order XVI Rule 10 of the Code of Civil Procedure, 1908 is as follows:-

“10. Procedure where witness fails to comply with summons.—*(1) Where a person has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court—*

(a) shall, if the certificate of the serving officer has not been verified by the affidavit, or if service of the summons has effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.]

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.”

11. Order XVI Rule 10 specifically empowers the Court to issue in its discretion at any time warrant either with or without bail for arrest of such person who without any lawful excuse, failed to attend or to produce the document in compliance with such summons.

12. The present is a case where the order was issued to Suspended Directors to produce the documents. When the Suspended Directors failed to produce documents required and appear before the Court, Non-Bailable Warrants were issued on 16.07.2021.

13. On 03.08.2021, the Court noticed the prayer made in Application I.A-3221 of 2021 and had observed that the reason given by the Suspended Board of Directors for not surrendering is not liable to be accepted. In order dated 03.08.2021, the Adjudicating Authority made following observations:-

“In the light of that submissions, when we perused the Order dated 16.07.2021, we notice that after

hearing of the Application of IA/2986/2021 filed by the Suspended Board of Director, we directed them to surrender before the Bench on or before 20.07.2021. That Order was dictated in the open Tribunal proceedings in the presence of the Counsel of the Suspended Board of Directors. Therefore, the contention of the Ld. Counsel for the suspended Board of Directors that since the Order was not uploaded till 20.07.2021, the Suspended Board of Directors could not surrender, is not liable to be accepted. Hence, we are not inclined to recall the order dt. 16/07/2021 and therefore, the prayer to recall the Warrant of Arrest is hereby rejected.

RP is also directed to initiate a criminal proceeding under Chapter-VII of the IBC against the Suspended Board of Directors for non-compliance of the Order passed by this Bench as well as for not furnishing the information as required by the RP, in accordance with the provision of law.

In the meantime, we again direct the Suspended Board of Directors to surrender before the Registrar of NCLT on or before 06.08.2021. Office is also directed to issue fresh Non-Bailable Warrants against the Suspended Board of Directors.

The Suspended Board of Directors are also directed to handover all the documents as specified in the Application filed under Section 19(2) by the RP and also furnish all the information as required in that Application.”

- 14.** On 03.08.2021, the Adjudicating Authority again directed to Suspended Directors to handover the documents as specified in Application under

Section 19(2) and further refused to recall the Warrant of Arrest. The Application I.A- 3221 of 2021 was ultimately heard and rejected on 30.09.2021.

15. From the facts noticed above, it is clear that in spite of several opportunities given to Suspended Directors, they refused to surrender even though their prayer for cancellation of the Non-Bailable Warrants was rejected. The provision of Rule 77 of the NCLAT Rules, 2016 read with Order XVI Rule 10 of Civil Procedure Code fully empowers the Adjudicating Authority to issue a Non-Bailable Warrant for enforcing attendance of a person. The power exercised by the Adjudicating Authority in issuing a Non-Bailable Warrant to the Appellants is thus well within jurisdiction of the Adjudicating Authority and the submission of the Counsel for the Appellants that Adjudicating Authority is not clothed with any power to issue Non-Bailable Warrant has to be rejected. The Appellants who are the Suspended Directors of the Corporate Debtor are required to submit the relevant documents and co-operate in the proceeding and are avoiding to comply with the direction and in the order dated 03.08.2021, the Adjudicating Authority had again directed the Suspended Directors to surrender and fresh Non-Bailable Warrants were issued but they have not surrendered rather press their Application for cancellation of warrant which was rightly rejected. The submission of the Counsel for the Appellants that the Adjudicating Authority could have proceeded *ex-parte* and passed order against the Corporate Debtor and Suspended Directors and it was not necessary to ask the presence of the Suspended Directors cannot be accepted. The proceedings under the IBC are proceedings of special nature object of which is resolution of insolvency of

Corporate Debtor. The Resolution Professional for discharging various statutory duties as entrusted under the Code should have access to necessary documents and records without which the proceedings under the IBC cannot proceed as per the objective of the Code. The Code empowers the Adjudicating Authority to take appropriate measures for ensuring compliance of the provisions of the Code and for ensuring that all personnel extend co-operation to IRP/ RP. Section 19 specifically empowers the Adjudicating Authority to issue appropriate direction for compliance. Section 19 is as follows:-

“19. Personnel to extend co-operation to interim resolution professional. - (1) The

personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.”

16. The orders which have been issued by the Adjudicating Authority including the impugned order dated 30.09.2021 has been issued in exercise of powers under Section 19. The powers under Section 19 has been given to authority for purpose and object and the Suspended Directors cannot escape their liability to submit necessary documents and to explain before the Court, their contention by saying that *ex parte* order ought to have been passed and their personal appearance should not have been asked for, cannot be accepted.

17. Insofar as submission of the Learned Counsel for the Appellants that the Tribunal is bound to follow the principles of natural justice, there can be no two opinions about the said principle. Section 424(1) of the Companies Act, 2013 specifically provides that the Tribunal while disposing of any proceeding before it shall be guided by the principles of natural justice. Present is a case where principles of natural justice have not been violated. The Appellants were issued notice on 02.08.2018 in response to which they failed to appear. Thereafter, Bailable Warrants were issued on 29.08.2018 and 17.10.2018 but the presence of the Appellants could not be secured and it was thereafter on 19.10.2018, Non-Bailable Warrants were issued. Issuance of Non-Bailable Warrants were repeated thereafter as noticed above. When the Appellants in spite of notices and Bailable Warrants chose not to appear before the Tribunal, the Tribunal was left with no option except to issue Non-Bailable Warrants.

18. The Submission of the Learned Counsel for the Appellants is that Tribunal is not bound by procedures laid down under the CPC, we have

already noticed that Rule 77 of the NCLT Rules, 2016 applies various provisions of Civil Procedures Code. We in the present case are only concerned with the procedure where a person fails to comply with summons which we have already dealt above. The procedure adopted by the Tribunal is in conformity with the NCLT Rules, 2016 as well as order XVI Rule 10 of the Code of Civil Procedure, 1908. Further submission of the Counsel for the Appellants is that due to non-compliance with Section 19 of the Code, the Appellant could have been prosecuted under Section 70 of the Code. The prosecution under Section 70 is separate and independent proceedings which in no manner fetter the power of the Tribunal under the Code. The submission of the Counsel for the Appellants is that there is no provision which requires that a person against whom enforcement is sought must be physically present. The present is a case where Tribunal to effectively discharge function by the Resolution Professional under the Code has to issue appropriate direction in the interest of Insolvency Resolution Process. For ensuring personal appearance of the parties, the Tribunal was fully competent to issue Non-Bailable Warrant and other mode for enforcing order of Tribunal were not necessary to be adopted. The submission of the Counsel for the Appellant that the conditions for issue of Non-Bailable Warrant are not satisfied is not correct. We have already noted the provision of Order XVI Rule 10 of the Code of Civil Procedure which empowers the Tribunal to issue warrant either with or without bail for arrest of such person. The condition that such person has without lawful excuse, failed to attend or to produce the document in compliance with such summons were fully met and it cannot be said that conditions for issuance of Non-Bailable Warrant were not satisfied.

19. We, thus, do not find any error in the impugned judgment of the Adjudicating Authority rejecting the Application for recall of cancellation of Non-Bailable Warrants. The Appeal is dismissed.

20. We may further observe that in addition to enforcement of Non-Bailable Warrants, it shall be also open for the Adjudicating Authority to recommend for initiation of prosecution against the Suspended Directors of the Corporate Debtor in event of commission of an offence within meaning of Code.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

NEW DELHI

28th February, 2022

Anjali