

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

I.A (I.B.C) 509/KB/2022
in
C.P (I.B) 1927/KB/2019

*An application under section 7 and section 60(5) of the Insolvency and
Bankruptcy Code of the Insolvency and Bankruptcy Code, 2016 read with Rule
11 of the NCLT Rules, 2016, 2016;*

In the matter of

Punjab National Bank

... Financial Creditor

And

Damani Infracon Private Limited

... Corporate Debtor

And

In the matter of

Mr. Rahul Damani;

... Applicant

Versus

1. Mr. Kanchan Dutta, IRP
2. Punjab National Bank

... Respondents

Date of hearing: 19/9/2023

Order Pronounced on : 17/10/2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)**

I.A (I.B.C) 509/KB/2022 in C.P (I.B) 1927/KB/2019

Appearances (via video conferencing / Physically)

Mr. Ramesh Ch. Prusti, Adv. : For Financial Creditor
Ms. Mahuya Ghosh, Adv.
Ms. Alisha Kar, Adv.

Mr. Rishav Banerjee, Adv. : For the Applicant in IA 509/2022
Mr. P.P. Bishwal, Adv.
Ms. Suranjana Chatterjee, Adv.

Mr. Rahul Auddy, Adv. : For IRP
Mr. Aditya Gooptu, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through hybrid mode.
2. This IA has been filed seeking recalling of order dated 25 May 2022 passed by this Adjudicating Authority whereby Corporate Debtor was admitted to CIRP in a petition under section 7 of Insolvency and Bankruptcy Code (“Code”) filed by Financial Creditor i.e. Punjab National Bank.
3. The main contentions raised in this IA are summarized herein below:
 - a. On the date of admission of order i.e. 25 May 2022 the Corporate Debtor was not called upon to make any submissions on merits. No opportunity was given to Corporate Debtor to make the submissions. Financial Creditor also did not make any submissions with respect to merits.
 - b. The main matter was not appearing in the main cause list on 25 May 2022 when the matter was pronounced. This prevented the Corporate Debtor to represent itself when the order was pronounced. Financial Creditor had not paid its cost in terms of 28 March 2022 and the Adjudicating Authority erroneously reserved the main petition for orders without hearing the Corporate Debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)**

I.A (I.B.C) 509/KB/2022 in C.P (I.B) 1927/KB/2019

- c. In the light of the order dated 28 March 2022, the Adjudicating Authority could not have passed the order dated 25 May 2022 as the Financial Creditor did not comply with the order dated 28 March 2022. However, while passing the order dated 25 May 2022, the Adjudicating Authority due to oversight, overlooked the order dated 28 March 2022.
4. Reply affidavit has been filed by the Bank sworn by Chief Manager of the Bank. The Corporate Debtor availed financial facilities from the Financial Creditor and defaulted in the same. There was some delay in the payment of costs, however, the same was paid *vide* its receipt dated 26 March, 2022. Copy of the receipt is annexed as Annexure-D.
5. The Adjudicating Authority passed an order on 28 March 2022 imposing further cost of Rs.30,000/- on the Financial Creditor for delay of few days to deposit the initial cost of Rs.20,000/- on 25 March 2022. The cost of Rs.30,000/- was deposited by the Financial Creditor on 19 November 2022 to the Prime Minister National Relief Fund.
6. The Bank has disputed and denied the contentions of the Corporate Debtor that the matter was not heard on merits on 26 April 2022. The Financial Creditor as well as the Corporate Debtor were given opportunity to make submissions on 26 April 2022 and after hearing both the sides, this petition came to be admitted.
7. It is further stated that the order was passed by this Adjudicating Authority after hearing both the parties. It is wrong on the part of the Corporate Debtor to state that it was not given opportunity of hearing rather the Adjudicating Authority had given patient hearing to both the sides.
8. The Financial Creditor submitted that the Adjudicating Authority cannot review its own order and therefore the instant application is not maintainable in the eye of law, the remedy lies under section 61 of the Code. Therefore, making an application in the guise of review will not

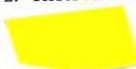

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)**

I.A (I.B.C) 509/KB/2022 in C.P (I.B) 1927/KB/2019

only violate the statutory mandate of the statute but also waste the time of the Adjudicating Authority.

Analysis and Findings

9. With a view to determine the contention of the applicant, the record of the cause list was obtained from the Registry and it is revealed as many as six matters were listed for pronouncement including the present one in the additional cause list on 25th of May, 2022 and the same was uploaded on the website.
10. Copy of order dated 26th April, 2022 scanned herein below which mentions in para '2' i.e. the C.P is reserved for order. This order of daily proceedings was uploaded on 30th April, 2022, against No. 1908134000512019 from the records of the I.T. Department of the Registry.

DIVISION BENCH COURT - I	P-105 NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH KOLKATA	C.P. (IB)/1927(KB)2019
CORAM: 1. HON'BLE MEMBER(J), SHRI RAJASEKHAR V.K. 2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI		
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 26TH APRIL, 2022, 10:30 A.M		
IN THE MATTER OF	PUNJAB NATIONAL BANK VS DAMANI INFRACON PRIVATE LIMITED	
UNDER SECTION	IBC UNDER SEC 7	
Appearance (via video conferencing)		
Mr. Ramesh Chandra Prusti, Advocate Mr. Akash Biswas, Advocate Ms. Smriti Das, Advocate Ms. Sukriti Dutta, Advocate		} for financial creditor
Mr. Joy Saha, Sr. Advocate Mr. Rishav Banerjee, Advocate Mr. Patita Paban Bishwal, Advocate		} for the corporate debtor
ORDER		
1. Learned counsel present and heard.		
2. Reserved for order.		
 Balraj Joshi Member (Technical)		 Rajasekhar V.K. Member (Judicial)

11. From the above, it is clear;-
 - i. The matter was reserved for orders and this was very much in the notice of the Corporate Debtor particularly when the same was uploaded on the website.
 - ii. The pronouncement of order was duly published. Therefore, the contentions of the applicant on both these counts are found to be incorrect.
12. Further, we find from the record, the attendance-sheet hand written and signed by Counsel for the Corporate Debtor was furnished on 26th of April, 2022 wherein names of all three Counsels are mentioned as recorded in the order dated 25th of May, 2022. Further, a perusal of order dated 25th of May, 2022 clearly and unambiguously records the fact of having heard the Ld. Counsel appearing for Financial Creditor and Ld. Sr. Counsel appearing for Corporate Debtor in para 20 of the order. This order also records various submissions made by both the parties.
13. As far as the cost is concerned, though there has been a delay, the fact remains that this was not made an issue when the matter was finally heard, therefore the Applicant cannot turn around and change its stand now.
14. We further find that the cost was imposed for the delay in filing of rejoinder by Punjab National Bank, which was subsequently filed. We also note that while admitting the petition, the Adjudicating Authority has not placed any reliance or referred to the rejoinder filed by Punjab National Bank.
15. We are of the view that such unnecessary application could have been avoided. The submissions made by the Applicant are contrary to record, hence the same are rejected.
16. I.A. (IB) No. 509/KB/2022 in C.P. (IB) No. 1927/KB/2019 is hereby rejected.
17. Interim order passed on 08 June 2022, shall stand vacated and the CIRP will continue in terms of order of admission dated 25th of May, 2022.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)**

I.A (I.B.C) 509/KB/2022 in C.P (I.B) 1927/KB/2019

18. List C.P. (IB) No. 1927/KB/2019 on 10 November 2023 for filing progress report by the Resolution professional.
19. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 17th day of October 2023.

zia