

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

Principal Bench, New Delhi

Comp. App (AT) (Ins) No. 381 of 2021

IN THE MATTER OF:

Basant Kumar

...Appellant

Vs.

**SVS Cleanroom and Engineering System OPC Pvt. Ltd. &Respondent
Anr.**

Present:

For Appellant: Mr. Swapnil Gupta, Mr. Sadio Noor, Advocates

**For Respondent: Mr. Harshal Kumar, Advocate for R1.
Ms. Prachi Johri and Ms. Sonali Gambhir, Advocate
for R2.**

O R D E R

12.01.2023: Heard Mr. Swapnil Gupta, Ld. Counsel for the Appellant, Mr. Harshal Kumar, Ld. Counsel for the Respondent No.1 and Ms. Prachi Johri, Ld. Counsel for Respondent No.2/Resolution Professional.

2. The present appeal has been filed under Section 61 of the 'Insolvency and Bankruptcy Code, 2016' (hereinafter referred to as 'The Code') against an order dated 09th April, 2021 passed by the 'National Company Law Tribunal, New Delhi' (hereinafter referred to as 'the Adjudicating Authority) in CP(IB) No. 1051/ND/2020 whereby the 'Adjudicating Authority' has admitted the application, filed under Section 9 of the Code by the Respondent No.1 herein.

3. The present appeal was filed before this 'Tribunal' on 17.05.2021. Considering the submission that the plea regarding 'pre-existing dispute' prior to 'Demand Notice' as well as recording 'submissions' that party will explore the possibility of settlement, this Tribunal directed the Appellant/Promoter to

handover the assets and record of the Corporate Debtor to the IRP. The IRP was directed to ensure that the 'Company' remains as a going concern and take the assistance of the 'Suspended Board of Directors' for the purpose of continuing the Corporate Debtor as 'going concern'.

4. It was informed by Ms. Prachi Johri, Ld. Counsel for the Respondent No.2 that during pendency of the appeal, some developments took place and on 10.11.2021 the 'Committee of Creditors' (hereinafter referred as to 'CoC') decided for 'Liquidation', however, no final decision has been taken considering the pendency of the present appeal.

5. Mr. Swapnil Gupta, Ld. Counsel for the Appellant assailing the impugned order, specifically referred to para 10 of the impugned order wherein it was indicated that the Tribunal itself had noticed that there were pre-existing dispute prior to the Demand Notice and even then the 'Adjudicating Authority' persuaded to admit the application. It has emphatically been argued that from perusal of the order itself, it is evident that order is 'ex-parte'. He also submitted that without valid service of notice, the 'Adjudicating Authority' proceeded and passed order which is reflected from the impugned order itself. It is in violation of 'Principle of Natural Justice'.

6. Mr. Harshal Kumar, Ld. Counsel for the Respondent No.1 tried to persuade the Court that there were no actual pre-existing dispute prior to the Demand Notice. He tried to persuade the court that notice was validly served to the Appellant but the Appellant preferred not to appear.

7. Besides hearing Id. Counsels for the parties, we have perused the materials available on record, particularly, impugned order. Before proceeding, it is appropriate to reproduce para 10 of the impugned order, as follows:

*“Para 10: Notice was issued to the Corporate Debtor vide order dated 19.11.2020 of the Adjudicating Authority. Further, it has been observed that neither a reply to the Section 9 application was filed by the Corporate Debtor nor has the Corporate Debtor ever appeared before the Adjudicating Authority. **We are of the view that the Corporate Debtor in its reply to the Demand Notice dated 23.01.2020 has raised various disputes which arose before the issuance of the Demand Notice,** however the Corporate Debtor has never appeared before the Adjudicating Authority to support its claim therefore, vide order dated 15.12.2020 the Corporate Debtor was proceeded ex-parte.”*

8. Besides this, it is evident that the order was passed without hearing of the ‘Appellant’. Nor any reply was filed by the Appellant and in absence of any response from the Appellant the order impugned order was passed.

9. We are of the opinion that instead of going into the merit of the case, since the order *per se* shows that it was ‘*ex-parte*’ in all fairness, it would be appropriate to ‘set aside’ the same and ‘remit back’ the matter to the ‘Adjudicating Authority’ permitting the Appellant to file proper response before the ‘Adjudicating Authority’. The ‘Adjudicating Authority’ after giving full opportunity to both the parties, may pass appropriate order in accordance with law without any delay.

10. Since, Id. Counsel for the Respondent No.2 submits that despite the fact that the ‘Resolution Professional’ has discharged his function and his fees has not been paid from November, 2019 because the matter was pending before this

Tribunal. We are of the view that the RP is entitled to get his fees and legal expenses in accordance with law. Direction is issued accordingly.

11. The 'Adjudicating Authority' is required to pass 'appropriate order' within 'two months' from the date of receipt/production of a copy of this order after giving full opportunities to all the parties. It is expected that the Adjudicating Authority may ensure clearance of dues of 'Resolution Professional' expeditiously.

With above 'observations' and 'directions', the appeal is disposed of. No order as to costs.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr.Alok Srivastava]
Member (Technical)

Raushan/Gc