

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

Company Appeal (AT) (Insolvency) No. 524 of 2023

IN THE MATTER OF:

Narendra Rajani Erstwhile Director **...Appellant**
Whiz Enterprises Pvt. Ltd.

Versus

Pegasus Assets Reconstruction Pvt. Ltd. & Anr. **...Respondent**

Present:

For Appellant : **Mr. Abjijeet Sinha, Mr. Puneet Jain, Mr. Harsh Jain,
Mr. Umang Mehta, Mr. Aditya Shukla, Adv.**

For Respondent : **Mr. Dinkar Singh, Mr. Gagan Garg & Mr. Rohit
Singh, Advocates.**

ORDER

01.06.2023: This appeal is directed against the order dated 20.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai) by which an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by the Financial Creditor has been admitted.

2. Shorn of unnecessary details, Counsel for the Appellant has pointed out that the Adjudicating Authority has elaborately referred to rejoinder in the impugned order whereas by order dated 08.07.2022 the prayer for filing of rejoinder was rejected. The said order dated 08.07.2022 read as under:-

“Mrs. Khushboo Shah Rajani, Advocate appeared for the Petitioner. Mr. Rajeev Ravi a/w Ms. Meenakshi Chaturvedi, Advocates appeared for the Corporate Debtor.

Rejoinder has not been filed by the Petitioner in the matter as directed. The request for further adjournment for filing rejoinder is rejected. Pleadings are complete in the matter.

List this matter for final hearing on 10.08.2022.”

3. It is further submitted that although the case was adjourned on 08.07.2022 to 10.08.2022 but on 16.12.2022 an application bearing I.A. No. 2396 of 2022 filed by the Financial Creditor was taken up for hearing in which the prayer made for placing on record the affidavit in the shape of rejoinder was rejected. The said order dated 16.12.2022 read as under:-

“I.A./2396/2022

The above application is filed by the Applicant/Financial Creditor seeking to take on record the affidavit in rejoinder filed by the Applicant.

Accordingly, the above I.A is rejected and disposed of.”

4. Counsel for the Appellant has submitted that on the one hand the Court has passed the effective orders for not taking on record the rejoinder filed by the Financial Creditor and on the other hand the Court has made reference to the rejoinder under the specific head created for that purpose ‘rejoinder of the petitioner’ and then recorded the findings also on the basis thereof. It is submitted that the impugned order suffers from non-application of mind because the previous order dated 08.07.2022 as well as 16.12.2022 were not taken into consideration and therefore, deserves to be set aside.

5. Counsel for the Respondent has not disputed about the aforesaid two orders dated 08.07.2022 and 16.12.2022.

6. Thus, in view of the aforesaid facts and circumstances, we are of the considered opinion that the impugned order is patently illegal as it has taken into consideration the pleadings which were not on record and therefore, the appeal is hereby allowed and the impugned order is set aside. The matter is remanded back to the Tribunal to decide again without referring the rejoinder as it is not on record and then pass a speaking order in accordance with law.

7. It is hereby clarified that while passing this order we have not made any observation in regard to the merit of the case.

8. The parties are directed to appear before the Tribunal on **15th June, 2023**.

The registry is directed to send the copy of this order to the concerned Tribunal.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

Sheetal/RR