

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

Company Appeal (AT) (Insolvency) No. 522 of 2023

IN THE MATTER OF:

Sanjay Chaudhary **...Appellant**

Versus

Dinesh Kumar Gupta **...Respondent**

Present:

For Appellant: Mr. Vivek Sinha, Mr. Vivek Malik, Mr. Karan Agg. Mr. Shubham Bharara, Advocates

For Respondent: Mr. Govind Bhardwaj, Mrs. Mumal Jani, Mr. Pradeep Shukla, Advocates for Liquidator.

With

Company Appeal (AT) (Insolvency) No. 196 of 2023

IN THE MATTER OF:

Vivek Prakash **...Appellant**

Versus

Dinesh Kumar Gupta **...Respondent**

Present:

For Appellant: Mr. Vivek Sinha, Mr. Vivek Malik, Mr. Karan Agg. Mr. Shubham Bharara, Advocates

For Respondent: Mr. Govind Bhardwaj, Mrs. Mumal Jani, Mr. Pradeep Shukla, Advocates for Liquidator.

ORDER

08.05.2023: **Company Appeal (AT) Ins. No. 522 of 2023:**

1. Heard Learned Counsel for the parties.
2. This Appeal has been filed against the Order dated 01st March, 2023 by which on an application under rule 11 filed by the Liquidator, an order has been passed directing the Appellant who was Respondent No. 4 in the Application to refund the amount as mentioned therein.

3. Learned Counsel for the Appellant submits that final order was passed on 22nd December, 2022 by the Adjudicating Authority in I.A. No. 111 of 2022, in which order, there was no direction against the Appellant. It is submitted that subsequently in Application I.A. No. 384 of 2023 filed by the Liquidator, the Impugned order dated 01st March, 2023 has been passed without appellant being made party to the Application or without giving notice to the Appellant.

4. Learned Counsel for the Liquidator submits that only clarification/rectification was asked for in I.A. No. 384 of 2023 and it was not necessary to hear any of the Respondents.

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

6. In the Order dated 01st March, 2023, direction has been issued against the Appellant to refund the amount as mentioned therein whereas in the original order dated 22nd December, 2022, there was no such direction. Even if the claim of the Liquidator was that some rectification was required in the order, the Appellant was required to be heard in the ends of justice since the order now is prejudicial to his interest.

7. We thus are of the view that ends of justice will be served in setting aside the order dated 01st March, 2023 and remitting the matter to the Adjudicating Authority for passing fresh order on I.A. No. 384 of 2023 after hearing the Appellant as well as Liquidator. Appellant may file his reply to the I.A. No. 384

of 2023 within two weeks so that matter may be heard at an early date. With these observations, the Appeal is disposed of.

Company Appeal (AT) Ins. No. 196 of 2023:

Learned Counsel for the Appellant seeks time to file physical copy of Rejoinder within a week. Prayer is allowed. List this Appeal on **25th July, 2023.**

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

Basant/nn