

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH
Company Appeal (AT) (CH) (Ins.) No. 417 of 2022
&
(I.A. No. 1021/2022)

[Arising out of Order dated 20.10.2022 passed by the `Adjudicating Authority' (`National Company Law Tribunal'), Bengaluru Bench in CP No. 122/BB/2021]

IN THE MATTER OF:

Rupesh Anand,

Suspended Developer of Prakruthi Solitaire
Project & Suspended Director of M/s Nandini
Hotels Pvt. Ltd.
#114/2, Lal Bagh Fort Road, Bengaluru,
Karnataka - 560004

...Appellant

Versus

1. Anup Tripathi

Residents of:
Flat No. 303, #151 Y.S. Residency,
24th Main, 6th Cross, HSR Sector 1,
Bengaluru, Karnataka - 560102

...Respondent No.1

2. Akanksha Mishra

Residents of:
Flat No. 303, #151 Y.S. Residency,
24th Main, 6th Cross, HSR Sector 1,
Bengaluru, Karnataka - 560102

...Respondent No. 2

3. Alkesh Kumar Khedle

C/o B.L. Khedle, Govind Colony,
Amla, Madhya Pradesh - 460551

...Respondent No. 3

4. S. Srinivasan

R/o Flat No. 301, Elegance Residency,
No. 5, 28th Main Road, BTM II Stage,
Bengaluru, Karnataka - 560076

...Respondent No. 4

5. S. Vijaylakshmi

R/o Flat No. 301, Elegance Residency,
No. 5, 28th Main Road, BTM II Stage,
Bengaluru, Karnataka - 560076

...Respondent No. 5

6. Amit Kumar Mishra

R/o 191K/19F, Rajrooppur,

- Near Durga Mandir,
Allahabad, Uttar Pradesh – 211011. **...Respondent No. 6**
- 7. Shweta Pandey**
R/o 191K/19F, Rajrooppur,
Near Durga Mandir,
Allahabad, Uttar Pradesh – 211011. **...Respondent No. 7**
- 8. Angesh Parammel**
R/o Sarvage, Swathy Nagar,
Kalekullengara (P.O.), Olavakkode,
Palakkad, Kerala – 678009 **...Respondent No. 8**
- 9. Preeja Ramachandran**
R/o Sarvage, Swathy Nagar,
Kalekullengara (P.O.), Olavakkode,
Palakkad, Kerala - 678009 **...Respondent No. 9**
- 10 Anish Kumar Mariyampampil**
R/o 4S, C-Block, Lake View Country
Apartments, Manipal Country Road, Begur
Road,
Singasandra, Bengaluru - 560068 **...Respondent No. 10**
- 11 Divya Ravindranathan**
R/o 4S, C-Block, Lake View Country
Apartments, Manipal Country Road, Begur
Road,
Singasandra, Bengaluru - 560068 **...Respondent No. 11**
- 12 Kuldeep Singh Misri**
R/o 23/301, Mantri Residency,
Bannarghatta Road, Bangalore - 560076 **...Respondent No. 12**
- 13 Bul Bul Chatta**
R/o 23/301, Mantri Residency,
Bannarghatta Road, Bangalore - 560076 **...Respondent No. 13**
- 14 Manoj Kumar Nair**
R/o A-902, Dew Drops, Alandi Road,
Vishratwadi, Pune – 411015 **...Respondent No. 14**
- 15 Remma Misri**
R/o A-902, Dew Drops, Alandi Road,
Vishratwadi, Pune – 411015 **...Respondent No. 15**
- 16 Pradeep Verma**
R/o. L-3/46, Vinay Khand, Gomti Nagar,
Lucknow, Uttar Pradesh – 226010 **...Respondent No. 16**

- 17 Mousmi Verma**
R/o. L-3/46, Vinay Khand, Gomti Nagar,
Lucknow, Uttar Pradesh - 226010 **...Respondent No. 17**
- 18 Rahul Menon**
R/o K-404, Purva Panorama,
Kalena Agrahara, Bannerghatta Road,
Bangalore – 560076 **...Respondent No. 18**
- 19 Subha Nair**
R/o K-404, Purva Panorama,
Kalena Agrahara, Bannerghatta Road,
Bangalore – 560076 **...Respondent No. 19**
- 20 Rahul Krishnat Shinde**
R/o. B-203, Solitaire Sy. No. 171B/2,3,4,
Opposite Ganesh Vihar Society, Dhanori –
Lohegaon Road, Dhanori, Pune – 411015. **...Respondent No. 20**
- 21 Bhoomika Rahul Shinde**
R/o. B-203, Solitaire Sy. No. 171B/2,3,4,
Opposite Ganesh Vihar Society, Dhanori –
Lohegaon Road, Dhanori, Pune – 411015. **...Respondent No. 21**
- 22 Ritesh Srivastava**
R/o HM Symphony Apartment
Flat No. 205, Accord Block,
Kasavanahalli, Off Sarjapur Road,
Bangalore - 560035 **...Respondent No. 22**
- 23 Shipra Srivastav**
R/o HM Symphony Apartment
Flat No. 205, Accord Block,
Kasavanahalli, Off Sarjapur Road,
Bangalore – 560035 **...Respondent No. 23**
- 24 Rominder Pal Singh**
R/o 80 – 1st Floor, 1st Block,
2nd Main, Kormangala, Bengaluru – 560034 **...Respondent No. 24**
- 25 Ravinder Kaur Sethi**
R/o 80 – 1st Floor, 1st Block,
2nd Main, Kormangala, Bengaluru – 560034 **...Respondent No. 25**
- 26 Subhasri Hariharan**
R/o 173, Senbagavana Street,
Tirumainagar, Tirunelveli.
...Respondent No. 26

- 27 Sabaribalan Shunmugasundaram**
R/o 173, Senbagavana Street,
Tirumainagar, Tirunelveli. **...Respondent No. 27**
- 28 J. Siva Kumar Varma**
R/o C – 501, Pridespring Fields Apartments,
Gubalalla Village, Subramanyapura Post,
Bangalore – 560061. **...Respondent No. 28**
- 29 J. Suhasini Varma**
R/o C – 501, Pridespring Fields Apartments,
Gubalalla Village, Subramanyapura Post,
Bangalore – 560061. **...Respondent No. 29**
- 30 DKS Srinivas**
R/o 1692, 17th Main, JP Nagar,
2nd Phase, Bangalore **...Respondent No. 30**
- 31 R Rekha Chandni**
R/o 1692, 17th Main, JP Nagar,
2nd Phase, Bangalore **...Respondent No. 31**
- 32 Tarunjit Singh**
R/o 64 Block – 1, Bhai Randhir Singh Nagar,
Ludhiana, Punjab – 141012 **...Respondent No. 32**
- 33 Gurbalpreet Kaur**
R/o 64 Block – 1, Bhai Randhir Singh Nagar,
Ludhiana, Punjab – 141012 **...Respondent No. 33**
- 34 Uttam Kumar Dubey**
R/o 220, New AG, Co-operative Colony,
Kadru, Ranchi, Jharkhand – 834012 **...Respondent No. 34**
- 35 Khushbu Dubey**
R/o 220, New AG, Co-operative Colony,
Kadru, Ranchi, Jharkhand – 834012 **...Respondent No. 35**
- 36 Ajoy Chourasia**
R/o F-3, Purva Fairmont,
HSR Layout, 24th Main,
Sector – 2, Bangalore – 560102 **...Respondent No. 36**
- 37 Aparna Chourasia**
R/o F-3, Purva Fairmont,
HSR Layout, 24th Main,
Sector – 2, Bangalore – 560102 **...Respondent No. 37**

38 Manaspreet Singh Sethi

R/o 80-1, 1st floor, 1st Block,
2nd Main, Kormangala, Bangalore – 560034. ...Respondent No. 38

39 Vidhi Sethi

R/o 80-1, 1st floor, 1st Block,
2nd Main, Kormangala, Bangalore – 560034. ...Respondent No. 39

40 Prakruthi Solitaire Project, Electronic City

Represented by its IRP
Mr. Vineeth Gupta,
#408, 4th floor, Laxmideep Building,
Laxmi Nagar, District Centre, Vikas Marg,
New Delhi - 110092 ...Respondent No. 40

Present:

For Appellant : Mr. Ricab Chand, Advocate.

For Respondents/ Caveator : Mr. Piyush Singh, Advocate

J U D G M E N T
(Virtual Mode)
(17.03.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

The present 'Appeal', is filed against the 'impugned order' dated 20.10.2022, passed in CP No. 122/BB/2021, by the 'Adjudicating Authority' ('National Company Law Tribunal', Bengaluru Bench), whereby, the 'Adjudicating Authority', dismissed the 'Petition', filed under the 'Insolvency & Bankruptcy Code, 2016' (**in short I & B Code, 2016**).

2. Mr. Rupesh Anand is the Suspended Director of project name 'Prakruthi Solitaire' is the 'Appellant' herein and there are 39 Respondents

who were 'Financial Creditors' of 'Prakruthi Solitaire' along with 40th Respondent Prakruthi Solitaire represented by IRP Mr. Vineet Gupta.

3. The 'Appellant' is a Director of M/s Nandhini Hotels Pvt. Ltd., incorporated on 10.05.1991, is engaged in various business including construction of Real Estate Projects M/s Nandhini Hotels Pvt. Ltd. initiated a Real Estate Project under the name Prakruthi Solitaire for construction of 338 flats i.e. 146 flats in Phase-I and 192 flats in Phase-II and all 39 Respondents herein were Financial Creditors who applied for Phase-II. It has been brought out that out of 338 flats, 290 flats have been handed over to Homebuyers.

4. The 39 Respondents herein filed an application under Section 7 of the I & B Code, 2016 on 27.07.2021 with a prayer to initiate 'Corporate Insolvency Resolution Process' against M/s Nandhini Hotel Pvt. Ltd. ('Corporate Debtor') in accordance with 'Construction Agreement' between the 'Financial Creditors' and the 'Corporate Debtor', the 'Financial Creditors' were to be given flats between 30.06.2014 to 30.09.2014 which included three months grace period. Since, the 'Corporate Debtor' could not deliver possession of units, the 'Financial Creditors' demanded refund of entire principal amount along with interest, but the 'Corporate Debtor' failed to return the same.

5. The 'Adjudicating Authority' admitted Section 7 Application of the 39 Respondents herein and put the company into 'Corporate Insolvency Resolution Process'.

6. Aggrieved by the same, the 'Appellant' has preferred the present 'Appeal' before this 'Appellate Tribunal'.

7. It is a case of the 'Appellant' that Real Estate Project 'Prakruthi Solitaire' is a single project although in two phases for construction of 338 units and cannot be treated as two different projects according to two phases of the whole project. The 'Appellant' further submitted that all 39 Respondents herein belonged to Phase II of the project and they did not pay due instalments when called upon to pay.

8. The 'Appellant' further stated that in October, 2019 several 'Financial Creditors' issued Demand Notice under Section 8 of the I & B Code, 2016 which were false and in reply to the same, the 'Corporate Debtor' asked these 39 Respondents to make payments of instalments due.

9. It is further the case of the 'Appellant' that few Respondents herein filed CP (IB) No. 122/BB/2021 before the 'Adjudicating Authority' on 27.07.2021 without proper authorisation and without authority letter. Learned Counsel for the Appellant quoted the cases in respect of alleged Financial Creditor No. 20, Financial Creditor No. 21, Financial Creditor No. 26, Financial Creditor No. 27, Financial Creditor No. 16, Financial Creditor No. 17 who did not produce authority letters along with the Petition. The Learned Counsel for the Appellant stated that they raised these objections in the Sur- Rejoinder, however the same had been ignored and overlooked by the 'Adjudicating Authority'. As per Learned Counsel for the

Appellant the Petition filed by the Financial Creditors was defective and did not meet the threshold as required under Section 7 of the I & B Code, 2016.

10. The 'Appellant' alleged that all these vital points were not considered by the 'Adjudicating Authority' who reserved the order on 29.09.2022 and issued the 'impugned order' on 20.10.2022.

11. It is further the case of the 'Appellant' that the 'Respondents' herein did not execute the proper verifying Affidavits as required under NCLT, Rules 2016.

12. As per the 'Appellant', total number of flats of the 'Corporate Debtor' in the project 'Prakruthi Solitaire' were 338 flats whereas the application was filed by 19 'Financial Creditors' thereby not meeting the minimum threshold as required under Section 7 of the I & B, Code, 2016.

13. The 'Appellant' also assailed the 'impugned order' for not considering that 'Financial Creditors' were not making payments of their due instalments in the project 'Prakruthi Solitaire'.

14. The 'Appellant' has also taken the plea that signatures of authority letters in several cases look different from one appearing on the agreement for sale, hence the authority letters cannot be treated valid and should have been rejected by the 'Adjudicating Authority'.

15. The 'Appellant' also states that the 'Financial Creditors' have not signed as required in Form 1 of the Insolvency Bankruptcy (Application to

the Adjudicating Authority) Rules, 2016 and the 'Adjudicating Authority' should have treated Section 7 Application as defective.

16. It is further the case of the 'Appellant' that the 'Adjudicating Authority' has erred in declaring moratorium against the entire project rather than only for Phase II where all 39 'Financial Creditors' had applied

17. Per contra, the Learned Counsel for the Respondents denied all the averments made by the 'Appellant'.

18. Learned Counsel for the Respondents stated that total 39 Financial Creditors file the original application filed under Section 7 of the I & B Code, 2016 who were allotted 20 Real Estate Units of a Phase II having 170 units and therefore met the threshold limits. Learned Counsel for the Respondents cited the judgment of Hon'ble Supreme Court of India in the matter of ***Manish Kumar vs. Union of India & Ors.*** [(2021) 5 SCC 1] in support of his arguments.

19. Learned Counsel for the Respondents stated that as per Clause 9 and 10 of the Construction Agreement, possession of the units were to be delivered between June 2014 to September 2016, however the 'Corporate Debtor' miserably failed to honour his commitments.

20. Learned Counsel for the Respondents further submitted that all such 'Financial Creditors' as home allottees had invested their hard earned money and to protect their financial interest 'Corporate Insolvency Resolution

Process' is the only way forward which will help to resolve their grievances and could put back the 'Corporate Debtor' on the rails.

21. Learned Counsel for the Respondents also denied that there were any defects in the applications.

22. Heard Learned Counsel for the Appellant and the Respondents and also perused the available material(s) on record. Several issues have been raised in the instant 'Appeal', which are required to be deliberated upon, before coming to a final conclusion.

23. Issue No. (I) Whether, the Application under Section 7 of the I & B Code, 2016 was complete and without defects and the same was considered accordingly, by the 'Adjudicating Authority'.

Issue No. (II) Whether, the entire project should be considered as single project or different phases should be considered as separate projects for calculating the threshold requirements to meet the Section 7 of the I & B Code, 2016.

Issue No. (III) Whether, the 'Joint Allottees', of an Apartment, should be treated as 'Single Allottee' or 'Multiple Allottees'.

24. Issue No. (I):

- It is the case of the 'Appellant', that 'No Authority Letters', were produced along with the Petition in respect of (i) Financial Creditor No. 20 Mr. Rahul Shinde (ii) Financial Creditor No. 21 Bhoomika Shinde (iii) Financial Creditor No. 26 Subasri (iv) Financial Creditor No. 27

Sabaribalan Gandhi (v) Financial Creditor No. 16 Mr. Pradeep Verma (vi) Financial Creditor No. 17 Mousmi Verma (vii) Siva Kumar Verma (Financial Creditor No. 28) (viii) Financial Creditor No. 29 Ms. Suuhasini Verma.

- The 'Appellant' assailed that the 'Adjudicating Authority', had erred in not appreciating the 'Objection', raised by the 'Corporate Debtor' in the 'Sur-Rejoinder' dated 06.06.2022 that the 'Authority Letters', are essential in view of the fact that the 'signatures' on the 'Authority Letters', in several cases look different from the ones appearing on the 'Agreement for Sale', and the 'PAN Card', and therefore, do not pass through the test of 'Genuineness' of these 'Authority Letters'.
- The 'Appellant' also alleged that the 'Adjudicating Authority', erred in not appreciating that the 'Financial Creditors', had not signed as required under 'Form 1' of the 'Insolvency Bankruptcy' (Application to Adjudicating Authority) Rules, 2016 and therefore, the 'Petition', was defective and an incomplete one.
- The 'Appellant' submitted that the 'Adjudicating Authority', had failed to appreciate the ratio, laid down by the Hon'ble Supreme Court of India in the matter of **A.K.K. Nambiar vs. Union of India** [(1969) 3 SCC 864], and the relevant extract of the Judgment at Para 8 is as follows:

"Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent

responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence.”

(emphasis supplied)

- The ‘Appellant’ strongly pleaded that although the ‘Adjudicating Authority’, in Para 7 (i) of the ‘impugned order’ dated 20.10.2022 noted part of the ‘Objections’, filed and argued by the ‘Corporate Debtor’, but did not consider the ‘Objections’, raised by the ‘Appellant’ on ‘merit’ and without consideration, the ‘Adjudicating Authority’, came to the conclusion that the ‘Application’ is complete.
- This ‘Appellate Tribunal’, takes note of the Para 7(i) of the ‘impugned order’ which read as under :-

“7. The Respondent vide its sur-rejoinder dated 07.06.2022, has inter alia further submitted as under: The Authority Letters annexed at pages 81-100 to the Petition and authority emails at pages 17 to 29 of the Statement of Rejoinder are in the form of letter/ email and therefore are not valid authority letters as required under Law. It is stated that Shri Anup Tripathi (Financial Creditor No.1) has signed on behalf of himself, Financial Creditors Nos. 2,3,20 and 21. However, no authority letter in Petition/ Rejoinder issued by Financial Creditor Nos. 20 and 21, and thus Financial Creditor No. 1 has no authority to sign on their behalf. It is stated that Financial Creditor No. 20

has already executed Sale Deed dated 22.10.2020 and having executed the same, Financial Creditor Nos. 20 and 21 could not have been made party to this Petition. Further, Shri Uttam Kumar Dubey (Financial Creditor No. 34) has signed on behalf of himself, Financial Creditor Nos. 35, 4, 5, 28 and 29. However, no authority letter was given to him by Financial Creditor Nos. 28 and 29 and thus cannot be treated as Parties to this Petition.”

- At this juncture, this ‘Tribunal’, adverts to the ingredients of Section 7 of the I & B Code, 2016, which reads as under :-

“7. Initiation of corporate insolvency resolution process by financial creditor- (1) *A financial creditor either by itself or jointly with 2[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

[Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against

the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish -

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3):

[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]

(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate-

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”

(emphasis supplied)

- From the reading of the ingredients of Section 7 of the Code, as mentioned Supra, it is obvious that, if an ‘Application’, filed under Section 7 of the I & B Code, 2016, is found to be incomplete, then the ‘Adjudicating Authority’, in compliance of proviso to Section 7 of the I & B Code, 2016 is required to issue ‘Notice’, and provide an opportunity to rectify the ‘Defects’, within ‘seven days’, failing which, the ‘Petition’, can be rejected. An ‘incomplete or improper authorisation’, may vitiate, the entire proceedings, rendering ‘Legal Action’, ‘Devoid of Authority’. It is therefore, felt that the ‘rectification of defects’, if any, is of utmost importance and cannot be ignored.
- From the ‘impugned order’, this ‘Appellate Tribunal’, notes that although in Para 7(i), the ‘Adjudicating Authority’, had recorded ‘part objections’ of the ‘Appellant’, regarding ‘Defects’ in ‘Application’. However in the Findings, commencing at Para 15, the ‘Adjudicating Authority’, had not mentioned or discussed, these issues. For the sake of clarity, it is palatable and worthwhile to reproduce Para 15 of the ‘impugned order’ dated 20.10.2022, which reads as under:-

“Para 15. We have carefully considered the arguments of the respective Counsels. The objection of the Respondents that provisions of the IBC and also RERA which both came into effect from 2016 cannot be applied since these Agreements were signed in 2013; is not tenable in Law. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs. 1,00,00,000/- (Rupees One Crore Only), the Petition is admitted in respect of “Prakruthi Solitaire” Project of Respondent- Nandhini Hotels Pvt. Ltd. Under Section 7 of the IBC, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code.”

(emphasis supplied)

- This ‘Tribunal’, aptly points out the decision of the Hon’ble Supreme Court of India in **Surendra Trading Co. vs. Juggilal Kamalpat Jute Mills Co. Ltd.**, (2017) 16 SCC 143, wherein it is observed and held that the time provided for rectifying the ‘Defective Application’, under Section 9 (5) of the ‘I & B Code 2016’, is directory in nature, and in the given circumstances, the ‘Adjudicating Authority’ (‘Tribunal’), can provide ‘more than 7 days’ time, to rectify the defect. The Hon'ble Supreme Court, has held that;

“5. One of the conditions, with which we are concerned, is that application under sub-section (2) has to be complete in all respects. In other words, the adjudicating authority has to satisfy that it is not defective. In case the adjudicating authority, after the

scrutiny of the application, finds that there are certain defects therein and it is not complete as per the provisions of sub-section (2), in that eventuality, the proviso to sub-section (5) mandates that before rejecting the application, the adjudicating authority has to give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice.

6. Sub-section (5) of Section 9, thus, stipulates two time periods. Insofar as the adjudicating authority is concerned, it has to take a decision to either admit or reject the application within the period of fourteen days. Insofar as defects in the application are concerned, the adjudicating authority has to give a notice to the applicant to rectify the defects before rejecting the application on that ground and seven days' period is given to the applicant to remove the defects.

22. Let us examine the question from another lens. The moot question would be as to whether such a rejection would be treated as rejecting the application on merits thereby debarring the applicant from filing fresh application or it is to be treated as an administrative order since the rejection was because of the reason that defects were not removed and application was not examined on merits. In the former case it would be travesty of justice that even if the case of the applicant on merits is very strong, the applicant is shown the door without adjudication of his application on merits. If the latter alternative is accepted, then rejection of the application in the first instance is not going to serve any purpose as the applicant would be permitted to file fresh application, complete in all aspects, which would

have to be entertained. Thus, in either case, no purpose is served by treating the aforesaid provision as mandatory.

23.2. When the application is listed before the adjudicating authority, it has to take a decision to either admit or reject the application. For this purpose, fourteen days' time is granted to the adjudicating authority. If the application is rejected, the matter is given a quietus at that level itself. However, if it is admitted, we enter the third stage.

24. Further, we are of the view that the judgments cited by NCLAT and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating Authority has to pass the Order is not mandatory but directory in nature would equally apply while interpreting the proviso to sub-section (5) of Section 7, Section 9 or subsection (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible.

25. Thus, we hold that the aforesaid provision of removing the defects within seven days is directory and not mandatory in nature. However, we would like to enter a caveat. 28. In fine, these appeals are allowed and that part of the impugned judgment of NCLAT which holds the proviso to subsection (5) of Section 7 or the proviso to sub-section (5) of Section 9 or the proviso to sub-section (4) of Section 10 to remove the defects within seven days as mandatory and on

failure, applications to be rejected, is set aside. No costs.

26. *We are also conscious of the fact that sometimes applicants or their counsel may show laxity by not removing the objections within the time given and may take it for granted that they would be given unlimited time for such a purpose. There may also be cases where such applications are frivolous in nature which would be filed for some oblique motives and the applicants may want those applications to remain pending and, therefore, would not remove the defects. In order to take care of such cases, a balanced approach is needed. Thus, while interpreting the provisions to be directory in nature, at the same time, it can be laid down that if the objections are not removed within seven days, the applicant while refiling the application after removing the objections, file an application in writing showing sufficient cause as to why the applicant could not remove the objections within seven days. When such an application comes up for admission/order before the adjudicating authority, it would be for the adjudicating authority to decide as to whether sufficient cause is shown in not removing the defects beyond the period of seven days. Once the adjudicating authority is satisfied that such a cause is shown, only then it would entertain the application on merits, otherwise it will have right to dismiss the application.*

27. *The aforesaid process indicated by us can find support from the judgment of this Court in Kailash v. Nanhku, wherein the Court held as under: (SCC pp. 500-01, para 46)*

46. (iv) *The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.*

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and

affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”

(emphasis supplied)

- In this connection, this ‘Tribunal’, takes into consideration, the ratio laid down, by the Hon’ble Supreme Court of India, in the case of **Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors.** [(2012) 4 SCC 407], where a ‘speaking order’, has been held, to be of ‘utmost importance’.

“Further, the expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.

In this case, the explanation given by the appellant in response to the charge-sheet/ show-cause notice was not considered at all. No reasoning had been given by the statutory authority for reaching the conclusion. It is not understandable as to on what basis such a cryptic order imposing such a severe punishment can be sustained in the eye of the law.”

- As already discussed in detail, the requirement of ‘Section 7 of the Code’, is that the ‘Application’, should be complete in all respects and in case of defects, the ‘Adjudicating Authority’ (‘Tribunal’), should provide an ‘opportunity’, to the ‘Applicant’, for ‘rectifying these defects’, before ‘Accepting’/ ‘Rejecting’ of the ‘Application’.
- The ‘Finding’, as quoted above. in para 15 of the ‘impugned order’, is ‘cryptic’, ‘bereft of any qualitative or quantitative discussions’, ‘smacks of any reasoned speaking order’, is therefore, clearly ‘Unsustainable’. Even, the ‘Respondents’ herein, have not brought out any details, to ‘allay’ the doubts raised, by the ‘Appellant’ herein, either in the ‘Appeal’ or in the ‘Reply/ Rejoinder’ in the ‘Original Petition’, before the ‘Adjudicating Authority’.
- Prima-facie and looking to the provisions of the I & B Code, 2016, the ‘impugned order’, on this ‘particular issue of defects’, cannot be ‘allowed’, and therefore, the ‘impugned order’ dated 20.10.2022 in CP No. 122/BB/2021, passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’), Bengaluru Bench, on this score alone, deserves to be ‘set aside’, and accordingly is ‘set aside’, to ‘secure the ends of Justice’.

- Since, the ‘impugned order’, is found to be on wrong side, on the basic issue, this ‘Appellate Tribunal’, is not inclined to delve deep into the other issues, as mentioned Supra, in Para 23.
- This ‘Tribunal’, relevantly points out that it is not expressing its opinion on the ‘merits’ or ‘demerits’ of the case, and hence, remits back the case to the ‘Adjudicating Authority’ (‘Tribunal’), with directions to look into all factual and legal aspects and decide the ‘Petition’ Denovo, on ‘merits’, by providing, ‘adequate opportunity’ of ‘Hearing’, to the respective ‘Parties’, and also, by adhering to the ‘Principles of Natural Justice’. It is reiterated that the ‘Adjudicating Authority’, shall decide on the ‘merits’ of the main ‘Petition’, in a ‘Fair’, ‘Just’, in a ‘Dispassionate Manner’, by passing a ‘Speaking Reasoned Order’ (in qualitative and quantitative terms), preferably within ‘twelve weeks’ from today, of course, uninfluenced and untrammelled with any of the ‘Observations’, made by this ‘Tribunal’.

25. With the above observations and directions, the instant Comp. App (AT) (CH) (INS.) No. 417 of 2022, stands ‘Disposed of’. No costs. The connected pending ‘Interlocutory Applications’, if any, are ‘Closed’.

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Simran