

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

Company Appeal (AT) (Insolvency) No. 235 of 2022

IN THE MATTER OF:

Vinay Kumar Ranchhoddas Mohota

...Appellant

Versus

Shree Shyam Trading Company & Anr.

Respondents

Present:

For Appellant: Ms. Preeti Goel and Mr. Anubhav Goel, Advocates.

For Respondents: Ms. Anjali Sharma, Advocate for R-2.

**O R D E R
(Virtual Mode)**

10.03.2022: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 30.08.2021 by which order the Adjudicating Authority (National Company Law Tribunal), Court No. 5, Mumbai Bench has admitted the Application under Section 9 filed by the Respondent.

2. The Respondent has issued notice under Section 8 to the Appellant for its operational debt by demand notice dated 25.11.2019 which was not replied by the Appellant. Subsequently, the Operational Creditor has filed application under Section 9 which application was also not replied. Several opportunities were granted by the Adjudicating Authority but the Appellant did not file any reply not availed opportunities granted by the Adjudicating Authority. In para 8 of the impugned order the Adjudicating Authority has made following observations:

“8. There is one more important fact which attracts the Bench’s attention and it is that this matter had come up for hearing on several occasions in the past namely

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09.01.2020, 31.01.2020, 25.02.2020, 07.07.2021, 16.07.2021 and 11.08.2021. The Corporate Debtor was given many opportunities to file the reply on these several occasions since beginning but the Corporate Debtor did not bother to file reply. On 11.08.2021, the Bench observed the following:

1. Mr. Reshant Shah, Advocate, appeared for the Counsel for the Petitioner in the matter. Counsel for the Corporate Debtor failed to appear today despite service of notice.
2. It is to be noted that Counsel for the Corporate Debtor appeared before this Bench on 09.01.2020 and on 31.01.2020, thereafter he appeared on 25.02.2020. Again, the matter was listed on 07.07.2021, where Counsel for the Corporate Debtor failed to appear and clear instructions were given regarding filing of reply otherwise their right to file reply will be forfeited. Today again the Corporate Debtor is absent.
3. Counsel for the Corporate Debtor is hereby set ex-parte.
4. Heard the Counsel for the Petitioner briefly.
5. **Reserved for order.”**

3. The Application under Section 9 having proceeded ex-parte, the Adjudicating Authority has admitted the application by the impugned order.

4. Learned counsel for the Appellant submits that the lawyer who was engaged by the Appellant does not appear before the Adjudicating Authority under misconception pertaining to some circular issued by Ministry of

Corporate Affairs. It is submitted that Appellant was ready to settle the matter with the Respondent after Section 8 notice was issued but it does not fructify.

5. We have considered submissions of learned counsel for the Appellant and perused the record. After ample opportunities granted by the Adjudicating Authority when the Appellant has not availed the opportunities to appear and also not filed reply to Section 9 Application, no option was left with the Adjudicating Authority except to proceed ex-parte and pass order of admission. We are of the view that the Adjudicating Authority has committed no error in admitting the Application under Section 9. We, however, observe that it is open for the Appellant to negotiate any settlement with the Respondent. If any settlement is entered into by the Appellant and the Respondent, they may file an appropriate application under Section 12A before the Adjudicating Authority, who may take decision in accordance with law. The appeal is dismissed with aforesaid observations.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

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