NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 769-770 of 2021

[Arising out of orders dated 06.07.2021 and 29.07.2021 in IB-2691/(ND)/2019 passed by the Ld. Adjudicating Authority (National Company Law Tribunal, New Delhi Court-IV)]

IN THE MATTER OF:

Insolvency and Bankruptcy Board of India

(Through Mr. Rajesh Kumar, Authorized Representative)

2nd Floor, Jeevan Vihar Building

3, Parliament Street New Delhi-110001.

...... Appellant.

Versus

Aditya Kumar

Proposed IRP of Adjoin Built & Developers Pvt. Ltd.

103, Pratap Bhawan, Bahadur Shah Zafar Marg,

New Delhi – 110002

Email Id: Aditya@ashwaniassociates.in

...... Respondent No. 1.

M/s Laxmi Steels

Having its Office at:

18, Loha Mandi, B.S. Road, Ghaziabad,

Uttar Pradesh-201009

Email id: lakshmisteels@gmail.com

...... Respondent No. 2.

Adjoin Built & Developers Pvt. Ltd.

Having its registered office at:

Unit No. 302, 3rd Floor,

D-Mall, Plot No. A-1,

Netaji Subhash Place,

Pritampura, Delhi-110034

Email id: tazation@victoryinfra.com

.... Respondent No. 3.

Present:

For Appellant: **Ms. Madhavi Divan, ASG.**
Mr. Vikas Mehta and Mr. Adith Nair, Advocates.

For Respondent:- **Mr. Arnav Kumar, Advocate for R-1, 3.**
Mr. Mrinal Harsh Vardhan, Advocate for R-2.
Mr. Suprateek Neogi, Advocate for R-3.

J U D G M E N T

(01st September, 2022)

Justice Anant Bijay Singh;

This Appellant Board have preferred this Appeal being aggrieved and dissatisfied by the orders dated 06.07.2021 and 29.07.2021 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Court-IV) in IB-2691/(ND)/2019 whereby and whereunder the Adjudicating Authority passed the following orders:

> *"We direct IBBI not to initiate any enquiry till further orders, if any enquiry is initiated, the same be halted till further direction from this Court.*
> *List IA No. 1346/ND/2021, IA No. 3253/ND/2021 on 05.08.2021 with another application filed by the Operational Creditor being IA No. 190/ND/2021 which is for rectification of the order dated 06.07.2021"*

2. The facts giving rise to this Appeal are as follows:

i) The Appellant is a statutory body established under Section 188 of the Code to carry out the purposes of the Code that consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons to promote entrepreneurship, availability of credit and balance the interest of all stakeholders. It is a unique regulator and regulates profession as well as process. It is pertinent to state herein that the Board has regulatory oversight over Insolvency Professionals, Insolvency Professional Agencies, Registered Valuers, Registered Valuers Organisations and Information Utilities and that it is the duty of the Appellant Board to ensure that the Corporate Insolvency Resolution process are conducted in a fair and just manner by the Interim Resolution Professional / Resolution Professional / Liquidator.

ii) The Respondent No. 1 is an Insolvency Professionals registration No. IBBI/IPA-001/IP-P00338/2017-2018/10609. The Respondent No. 2 is M/s Laxmi Steels, an Operational Creditor. The Respondent No. 3, Adjoin Built & Developers Pvt. Ltd., is the Corporate Debtor which is undergoing CIRP before the Adjudicating Authority.

iii) Further case is that one M/s Laxmi Steels based on whose application under Section 9 of the Code read with rule 6 of the Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016 the Adjudicating Authority admitted the CIRP of the Corporate Debtor vide order dated 20.03.2020 and appointed the Respondent No. 1 as an IRP. Thereafter, an application came to be filed by the Operational Creditor seeking to change the name of IRP appointed by the Adjudicating Authority vide order dated 20.03.2020. From the record, it appears that the IRP i.e. the Respondent No. 1 did not take charge of the Corporate Debtor in the matter. The Adjudicating Authority vide order dated 06.07.2021 made the following observation:

> *"We refer this matter to IBBI to make appropriate enquiry with respect to IRP appointed by the Bench and take appropriate action as required against said IRP.*
> *....Application is disposed of with the direction to the IBBI to take appropriate steps."*

iv) The Appellant sent an email dated 14.07.2021 (Annexure A/4) to the Respondent No. 1, seeking an explanation from him regarding the observations made by the Adjudicating Authority. Vide its reply dated 15.07.2021 (Annexure A/5), the Respondent No. 1 stated that it could not take charge as IRP of the Corporate Debtor because he was not aware about his appointment as an IRP in the said matter.

v) Further case is that while Appellant Board was reviewing the reply of Respondent No. 1, the Respondent No. 1 filed an Interim application bearing I.A. No. 3523/ND/2021 in (IB)-2691(ND) 2019 assailing the order dated 06.07.2021 of the Adjudicating Authority thereafter, the Adjudicating Authority vide order dated 29.07.2021 disposed of the application with the following observations:

> *"We direct IBBI not to initiate any enquiry till further orders, if any enquiry is initiated, the same be halted till further direction from the court."*

vi) Further case is that the Appellant Board was preferred the Appeal bearing Company Appeal (AT) (Ins.) No. 324 of 2019 against order dated 05.02.2019 passed by the Adjudicating Authority, New Delhi Bench quashing the disciplinary proceedings initiated by IBBI and the same was disposed of by this Appellate Tribunal with the following directions:

> ***"7.*** *For the reasons aforesaid, we set aside the last portion of the impugned order dated 5th February, 2019 relating to quashing of all disciplinary proceedings. The matter is remitted to the IBBI to pass appropriate order taking into consideration the reference of initiation of proceedings by the Adjudicating Authority as made on 26th April, 2018 and latter acceptance of explanation. The 'Resolution Professional' has already been expunged and it is expected that an order of closure will be passed at an early date. The Appeal stands disposed of. No cost."*

3. The Appellant Board preferred the instant Appeal against the impugned order dated 29.07.2021 under Section 61 of the Code on the following amongst grounds:

- The Impugned order is bad, perverse and suffers from patent and manifest error of law and shows complete non application of mind, as the Ld. Adjudicating Authority has grossly erred in passing the impugned order.
- The Ld. Adjudicating Authority has exceeded beyond the powers vested upon it by virtue of the Code.

- The Ld. Adjudicating Authority has exceeded its jurisdiction while passing the impugned orders and directing rather than referring the matter to the Appellant to take action.
- The Ld. Adjudicating Authority, while passing the impugned orders has in fact acted as a superior Authority over the Appellant Board or as a writ court, thereby taking over the functions which, under the Code are exclusively vested with the Appellant Board.
- The Orders of the Ld. Adjudicating Authority are illegal as the exclusive prerogative to initiate or not to initiate any action against any of the Insolvency Professionals vests solely with the Appellant Board.
- The Impugned Order of the Ld. Adjudicating Authority is bad in law as once the Ld. Adjudicating Authority refers the matter to the Appellant Board, it cannot direct the Board to abruptly stay or close the proceedings initiated by it nor can it direct to not initiate the proceedings.
- There exists clear demarcation between the powers of the Adjudicating Authority and that of the Appellant Board. Ld. Adjudicating Authority cannot encroach upon the powers and duties conferred upon the Appellant Board.
- The Impugned Orders passed by the Ld. Adjudicating Authority are against the principles of natural justice, equity and good conscience.

4. The Learned Counsel for the Appellant during the course of arguments and in his written submissions submitted that vide order dated 20.03.2020 the Ld. Adjudicating Authority appointed Respondent No. 1 as an IRP in an insolvency proceedings against Adjoin Built and Developers Pvt. Ltd. From the record, it appears that the Respondent No. 1 failed to take charge of the Corporate Debtor as an IRP and therefore, an Application was filed by the Operational Creditor seeking to change the name of the IRP since the IRP had not taken over the Corporate Debtor and the CIRP period of 330 days had expired. By way of first impugned order, the Ld. Adjudicating Authority referred the matter to the Appellant Board, directing the Board to make appropriate enquiry with respect to the conduct and actions of Respondent No. 1.

5. It is further submitted that after perusing the order of the Ld. Adjudicating Authority, the Appellant Board independently examined the issue and vide email dated 14.07.2021 directed the Respondent No. 1 to file a response along with relevant documents with the Appellant Board. Vide email dated 15.07.2021 the Respondent No. 1 sent his response to Appellant's email stating that he was never informed about his appointment as an IRP in the said matter either by the registry or by the operational Creditor and therefore, he could not take any steps in that regard. Surprisingly, while the Appellant Board was examining the response of the Respondent, the Adjudicating Authority passed the second impugned order dated 29.07.2021 'Directed the IBBI not to initiate any enquiry till further orders, if any enquiry is initiated, the same be halted till further directions of this court'.

6. It is further submitted that the Ld. Adjudicating Authority, by issuing the aforementioned directions to the Board, has clearly transgressed it jurisdiction given under the Code and if the impugned order is not set aside, it would lead to defeating the purpose of the Code and would have large scale implications on the functioning of the Board. The Appellant Board is an independent body which has been vested with exclusive jurisdiction to regulate the functioning of an Insolvency Professional and also to carry out inspections and investigations on IPs and pass any orders which may be required for compliance of the provisions of the Code and the regulations issued hereunder.

7. It is further submitted that as per the scheme of the Code, the Appellant Board is the sole authority which is entrusted with the powers to oversee and regulate the workings and functions of an Insolvency Professionals. The Code provides a self-contained scheme for inspection and investigation of the IPs. The same can be evinced from the scheme of the code, which is as follows:

a. The Regulation of Insolvency Professional, agencies and information utilities are given under Part IV of the Code. Pertinently, the provisions for Appellant Board's establishment, powers and functioning etc. are also under Part IV of the Code. A perusal of provisions under Part IV of the Code would show that there is not even a mention of the NCLT in respect of regulation of Insolvency Professions and therefore, it is clear that the legislative intent behind establishment of the Board was *inter alia* to grant an exclusive power to the Appellant Board to oversee the working of the Code as well as functioning of the Insolvency Professionals.

b. Under Section 196 of the Code, the Appellant Board has power, *inter alia,* to register the IPs and to regulate their working and practices in furtherance to the purposes of the Code. Importantly, Section 196(f) confers exclusive power on the Appellant Board to carry out inspections and investigations on the Insolvency Professionals and to pass such orders as may be required for compliance of the provisions of the Code and regulations made thereunder. Apart from this, Section 196(g) specifically empowers the Appellant Board to monitor the performance of the IPs and pass any directions as may be required for compliance of the provisions of the Code and regulations made thereunder.

c. In terms of Section 218, the Appellant Board has plenary power to order for inspection or investigation. It is submitted that such powers are not subservient to any directions from the Adjudicating Authority.

8. It is further submitted that Section 240 of the Code empowers the Board to make necessary regulations and rules to carry out the provisions under the Code. In furtherance to the said powers conferred under the Code, the Appellant Board has made various regulations, including, 'IBBI (Insolvency and Investigation) Regulations, 2017'. It is submitted that the said Regulations provides a detailed procedure as to how an inspection or an investigation is to be conducted by the Board. Under the Regulations, the Insolvency Professional is given adequate opportunity to present his case to the Board and the Board is required to pass appropriate orders only after taking into consideration all the facts and circumstances. Therefore, a perusal of the provisions would evince that neither the Code, not the rules framed thereunder confers any power to the Adjudicating Authority to interfere with the process f inspection and investigation initiated by the Board, not does it have the power to direct the Appellant board to take or not to take actions.

9. It is further submitted that as per the law laid down and interpreted by Hon'ble Supreme Court as well as this Appellant Tribunal, it is now a well settled principle that the Adjudicating Authority does not have power to either quash or stay the proceedings initiated by the Appellant Board. Hon'ble Supreme Court in the case of ***'K. Sashidhar Vs. Indian Overseas Bank & Ors. [(2019) 12 SCC 150]'*** has clarified that the Adjudicating Authority has been endowed with limited jurisdiction as specified in the IBC and that it cannot act as a court of equity or exercise plenary powers. This Appellant Tribunal in the case of ***'Insolvency and Bankruptcy Board of India Vs. Shri Rishi Prakash Vats & Ors. [C.A. (AT) (Ins.) No. 324 of 2019]',*** wherein this Appellant Tribunal was ceased of the similar question of law that whether the Adjudicating Authority has jurisdiction to quash the disciplinary proceedings once initiated by IBBI, and categorically observed as hereunder:

> **"***3. On hearing the IBBI, we are of the view that once a disciplinary proceeding is initiated by the IBBI on the basis of evidence on record, it is for the Disciplinary Authority, i.e. IBBI to close the proceeding or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of any power with the Adjudicating Authority (National Company Law Tribunal), the Adjudicating Authority cannot quash the proceeding, even if proceeding is initiated at the instance and recommendation made by the Adjudicating Authority / National Company Law Tribunal....***"**

10. Similarly, this Appellant Tribunal in the case of ***'Mohan Gems & Jewels Pvt. Ltd. Vs. Vijay Verma & Ors. [C.A. (AT) (Ins.) No. 849 of 2020]',*** very succinctly described the role of Adjudicating Authority, it is observed as under:

> ***"26.** It is well settled proposition that the legality and propriety of any Regulations/Notifications/Rules/Act cannot be looked into by NCLT or NCLAT. The Tribunal can only ascertain whether the procedures provided for under the Code/Companies Act, 2013 are being followed or not. The Adjudicating Authority cannot beyond this**"***

11. It is further submitted that a perusal of the aforementioned judgments passed by Hon'ble Supreme Court and this Appellate Tribunal as well as provisions of the Code would evince that the Ld. Adjudicating Authority has not been vested with the power to give any directions to the Board and therefore, being a creature of a statute, the Adjudicating Authority cannot travel beyond the powers granted to it under the Statute. It is pertinent to note that during the pendency of the present Appeal, the Ld. Adjudicating Authority, vide Order dated 07.03.2022 (at page 8 of the Reply filed by the Respondent No. 2) has allowed the Respondent No. 1 to continue as the IRP in said matter. Inspite of the fact that the Appellant Board was ceased of the issue and Ld. Adjudicating Authority observed, *'..... Though, the Operational Creditor has also failed to deposit the amount and did not approach the IRP, but it is apparently the duty of the Registry to intimate the order regarding initiation of the CIRP proceedings to the Ld. IRP. Therefore, apparently the default has occurred due to the reason that the registry could not communicate properly to the Ld. IRP.'*

12. It is further submitted that inspection and investigation into the actions of an Insolvency Professional is a fact finding process and the Ld. Adjudicating Authority does not have the power to interfere with this process in any manner, Therefore, in view of the above, this Appellate Tribunal may be pleased to set aside both the impugned orders in view of the fact that the Ld. Adjudicating Authority, in the present case, has clearly transgressed it powers given under the Code.

13. The Ld. Counsel for the Respondent No. 1 in his Reply Affidavit along with written submissions submitted that it does not wish to join issues with the Appellant Board on whether the Adjudicating Authority has the power or not to issue directions to IBBI to initiate or halt enquiry against IRP. However, in order to ensure that the interest of the Respondent No. 1 is protected, it wishes to make the following limited submissions:

- It is evident from the above factual conspectus that the Respondent No. 1 could not commence the CIRP as the admission order was admittedly never communicated to him, either by the Registry or by the Operational Creditor. It is clear that Respondent No. 1 has been unnecessarily harassed in this matter for no fault of his.
- The Respondent No. 1 has no objection if the present Appeal is allowed as long as both the Orders dated 06.07.2021 and 29.07.2021 are set aside to the extent it directs IBBI to initiate or halt enquiry against IRP. If the Adjudicating Authority does not have the power under the Code to halt enquiry against any IRP then naturally, it also does not have power under the Code to initiate enquiry against any IRP.
- It is relevant to note herein that the order dated 29.07.2021 was passed as an interim measure in I.A. No. 3523/ND/2021 filed by Respondent No. 1 seeking recall of the 1st Impugned Order i.e. 06.07.2021. Grave prejudice would be caused to the IRP if the Order dated 29.07.2021

directing IBBI to halt enquiry is set aside, but not the order dated 06.07.2021 whereby the Adjudicating Authority directed the IBBI to initiate enquiry against the Respondent No. 1 (especially in view of the final order dated 07.03.2022 passed by NCLT).

- Even if this Appellate Tribunal holds that the Adjudicating Authority has the power to direct IBBI to initiate enquiry against IRP, but not to halt the enquiry proceeding against the IRP, the IRP requested this Appellate Tribunal to set aside the Order dated 29.07.2021 only to that extent.

14. The Ld. Counsel for the Respondent No. 2 in his Reply Affidavit submitted that in view of the order dated 07.02.2022 passed by the Ld. Adjudicating Authority, the Respondent No. 2 has conceded to the appointment of Aditya Kumar to be the IRP for the Corporate Insolvency Resolution Process of the Corporate Debtor. The Respondent No. 2 declares that so far as the appointment of Aditya Kumar as an IRP by the Ld. Adjudicating Authority is concerned the Respondent No. 2 is left with no grievance and accepts him as the IRP.

15. After hearing the parties and having gone through the record, we place reliance on the Judgment of the Hon'ble Supreme Court in the case of ***'K. Sashidhar Vs. Indian Overseas Bank & Ors. [(2019) 12 SCC 150]'*** wherein, in paragraph 58, it is held as under:

> ***"58.*** *Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the*

> *adjudicating authority (NCLT) under Section 31(2) read with Section 31 (1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.***"**

Further, this Appellate Tribunal in the case of **'*Mohan Gems & Jewels Pvt. Ltd. Vs. Vijay Verma & Ors. [C.A. (AT) (Ins.) No. 849 of 2020] (supra)*'** *and* **'*Insolvency and Bankruptcy Board of India Vs. Shri Rishi Prakash Vats & Ors. [C.A. (AT) (Ins.) No. 324 of 2019] (supra)*',** has held similar view, the ratio of which is discussed in the aforenoted paras 9 and 10. Therefore, we are of the considered view that the impugned orders passed by the Adjudicating Authority cannot be sustained in the eye of law, therefore, the impugned orders dated 06.07.2021 and 29.07.2021 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Court-IV) in IB-2691/(ND)/2019 are set aside and the instant Appeal is allowed.

16. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Adjudicating Authority (National Company Law Tribunal, New Delhi Court-IV), forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi

01st September, 2022

R. Nath.