

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins.) No. 444 of 2024

&

I.A. No. 1520, 1521, 4288 of 2024

IN THE MATTER OF:

Dhara Cements (India) Pvt. Ltd.

...Appellant

Versus

Dineshbhai Khimjibhai Patel

...Respondent

Present:

For Appellant: Ms. Manisha T Karia, Sr. Advocate, Mr. Deepin Deepak Sahni, Ms. Ananya Arora, Advocates.

For Respondent: Mr. Palash S. Singhai, Mr. Harshal Sareen, Advocates and Mr. Tirth Nayak.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the Corporate Debtor under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') against the order dated 13.02.2024 by which an application filed under Section 7 of the Code by the Financial Creditor, namely, Dineshbahi Khimjibhai Patel against the CD, namely, Dhara Cements (India) Pvt. Ltd. for the resolution of an amount of Rs. 1,51,32,072/- as on 30.04.2013 has been admitted and Mr. Gyaneshwar Sahai was appointed as the Interim Resolution Professional (IRP).

2. Notice in the appeal was issued on 29.02.2024 and at that time the following order was passed by this court:-

“29.02.2024: Learned Counsel for the Appellant submits that the Appellant is ready to deposit the principal amount of Rs. 57,29,675/-. It is submitted that there was no material before

the Adjudicating Authority to prove that there was any financial debt owed by the Corporate Debtor hence the Application under Section 7 ought not to have been admitted. It is submitted that financial statement relied as on 31st March, 2016 was only an audited financial statement. Appellant seeks time to file the balance sheet as on 31st March, 2016 and balance sheets thereafter as was directed by the Adjudicating Authority by its order dated 03.10.2023.

2. Let the Appellant deposit the aforesaid amount in the fixed deposit receipt drawn in the name of 'Registrar, NCLAT, New Delhi' within two weeks from today. Appellant shall also bring all relevant balance sheets as indicated above within three weeks.

3. Issue notice to the Respondents through Speed Post as well as Email. Requisites along with process fee, if not filed, be filed within two days.

4. List this Appeal on 02nd April, 2024.

In the meantime, in pursuance of the Order impugned dated 13.02.2024, no further steps shall be taken."

3. However, on 27.09.2024 the appeal was dismissed for non-prosecution and at that time the following order was passed:-

"No one has put in appearance on behalf of the appellant nor there is a request for a pass over or even for an adjournment.

Dismissed for non-prosecution."

4. The Appellant filed an application for restoration of the main appeal by recalling of the order dated 27.09.2024. The said application i.e. RA No. 39 of 2024 was allowed on 16.10.2024 and the appeal was restored to its original number. The order dated 16.10.2024 is also reproduced as under:-

"Restoration Application No. 39 of 2024

This Application has been filed by the Appellant for recalling of the order dated 27.09.2024 by which the main appeal i.e.,

Company Appeal (AT) (Ins.) No. 444 of 2024 has been dismissed for non-prosecution.

Notice in the application was issued to which Reply has been filed by the Respondent.

Counsel for the Appellant has submitted that the Appellant has been appearing through Counsel in this case on all the previous dates of hearings and the non-appearance on 27.09.2024 was neither deliberate nor intentional.

In the aforesaid application, the Appellant has assigned sufficient reasons for the purpose of restoration of the appeal, hence the application is allowed and the order dated 27.09.2024 is hereby recalled. The appeal is restored to its original number with inter order passed therein.

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Counsel for the Respondent has submitted that the Reply is ready which shall be filed today. Let the Reply be filed today with an advance copy to the Appellant. Rejoinder, if any, be filed within two weeks thereafter.

List this matter for hearing on 06.11.2024.”

5. During the course of hearing, Counsel appearing on behalf of Respondent raised an objection regarding maintainability of the appeal by the appellant (CD). In this regard, an order was passed by this Court on 07.07.2025 in which the objection raised by Respondent and prayer made by the Appellant for filing an application to pursue the appeal through the suspended director of the CD were noticed. The order dated 07.07.2025 is also reproduced as under:-

“This appeal is directed against the order dated 13.02.2024 by which application filed under Section 7 by the Respondent has been admitted. The appeal has been filed by the Company (CD) itself and not through the Suspended Director of the CD.

Counsel for the appellant prays for an adjournment to file an appropriate application to pursue this appeal by the Suspended Director of the CD.

On his request, adjourned to 18.07.2025.”

6. The Appellant has filed an application bearing I.A No. 4056 of 2025 dated 14.07.2025 in which prayer has been made for amendment of the appeal and memo of parties, admitting that the appeal was inadvertently filed on behalf of the Appellant – Company / CD but it has been wrongly averred that a direction was issued by this Court on 07.07.2025 to amend the appeal and memo of parties rather the application has been filed for amendment of the appeal to the effect that it may be considered to have been filed by the CD through suspended director and the memo of parties was sought to be amended accordingly. On 07.07.2025 the case was adjourned to 18.07.2025 and on 18.07.2025 the case was adjourned to 21.07.2025. On 21.07.2025 the case was heard and the appeal was dismissed on the ground that the appeal filed by the CD against the order of admission is not maintainable which relying upon an earlier order passed by this Court in CA (AT) (Ins) No. 1086 of 2024 ‘Krystal Stone Exports Ltd. Vs. Stressed Assets Stabilization Fund & Anr.’ decided on 16.10.2024. At that time of hearing, Counsel appearing on behalf of Respondent had also submitted that the order passed by this court in the case of Krystal Stone Exports Ltd. (Supra) has further been upheld by the Hon’ble Supreme Court in Civil Appeal No. 2266 of 2025 which was dismissed on 23.04.2025.

7. However, Counsel appearing on behalf of the Respondent later on realized that he has committed a mistake in referring to the order passed in

Civil Appeal No. 2266 of 2025, upholding the order passed in CA (At) (Ins) No. 1086 of 2024 which was in fact not the appeal filed against the order passed in CA (AT) (Ins) No. 1086 of 2024 by this court on 16.10.2024.

8. Counsel for the Respondent mentioned this fact in Court and was permitted to file an appropriate application for recalling of the order dated 21.07.2025. Accordingly, Respondent filed the application i.e. I.A No. 4244 of 2025 in which he admitted his mistake but it was alleged that it was inadvertent and not deliberate.

9. Be that as it may, I.A No. 4244 of 2025 was ultimately allowed vide order dated 25.07.2025 and the order dated 21.07.2025 which was in the form of draft order was recalled and the main appeal was listed for fresh hearing on 18.08.2025. The order dated 25.07.2025 is also reproduced, for the sake of completion of facts, as under:-

“I.A. No. 4244 of 2025- This application is filed by the Respondent in a disposed of appeal for recalling of the order dated 21.07.2025 alleging that he had inadvertently produced a copy of the order of the Hon’ble Supreme Court passed in Civil Appeal No. 2266 of 2025 decided on 23.04.2025 alleging it to be the order upholding the order passed by this court on 16.10.2024 in CA (AT) (Ins) No. 1086 of 2024.

2. Before we could have signed the order dated 21.07.2025, Counsel for the Respondent, realising his mistake that he had produced the order of the Hon’ble Supreme Court which was unconnected with the order of this court dated 16.10.2024, mentioned it in the presence of the Counsel for the appellant and requested to allow him to file an application for recall of the order dated 21.07.2025.

3. Notice in the application.

4. Counsel for the appellant accepts notice in court and has submitted that the order dated 21.07.2025 may be recalled and the appeal may be heard and decided on merits again.

5. Counsel for the Respondent is regularly appearing in this court. We have not noticed any such mistake committed by him in the past and that he regrets profusely for the inadvertent mistake committed and has also tendered his unconditional apology, therefore, keeping in view the facts and circumstances of this case, we allow this application and consequently recall the order dated 21.07.2025 which is still in the form of a draft order, having not been signed or uploaded on the website of this court and direct the hearing of main appeal afresh for the purpose of its adjudication.

6. CA (AT) (Ins) No. 444 of 2024- List this appeal for fresh hearing on 18.08.2025.”

10. The main appeal was reheard on 18.08.2025 and the order was reserved.

11. Counsel for the Appellant has submitted that though the appeal has been filed only by the CD and not by the suspended director of the CD but this lacuna can be cured by allowing the application for amendment bearing I.A No. 4056 of 2025. It is further submitted that the appeal was filed on behalf of the CD because the management of the CD was not taken over by the IRP and the appeal was filed immediately within a period of 7 days of the impugned order. She has further submitted that though Section 61 of the Code explicitly provides that ‘any person’ aggrieved by the order of the AA may prefer an appeal to the Appellate Tribunal and as per Section 3(23) of the Code the person includes a company, therefore, there was no explicit bar in the statute for the CD (Company) against which application under Section 7 has been admitted, to prefer the appeal to assail the order of admission. It is also submitted that amendment in the cause title is merely a formality which does

not change the nature of the appeal because instead of the appeal having been filed by the CD (Company itself), by amendment, it can be allowed to have been filed through the suspended director. It is submitted that in the case of Dena Bank Vs. C. Shivakumar Reddy (2021) 10 SCC 330 it has been held by the Hon'ble Supreme court that the amendment of pleadings is permitted under the Code. Counsel for the Appellant has also referred to the order passed in CA (AT) (Ins) No. 221 of 2017 'Falcon Tyres Ltd. Vs. Belthangady Taul' decided on 29.11.2017. The said read as under:-

"In view of the recent decision of the Hon'ble Supreme Court in 'Innoventive Industries Ltd. Vs. ICICI Bank' disposed on 31.08.2017, Learned Counsel for the Appellant prays for and allowed one week time to file an application for substitution by an aggrieved person i.e. Shareholder/Director for substituting him as Appellant in place of M/s Falcon Tyres Limited and to transpose the Appellant M/s Falcon Tyres Limited through IRP as 3rd Respondent.

In the meantime, 2nd Respondent may file reply affidavit.

Post the matter on 07th December, 2027.

12. She has also relied upon the order passed by this Court in CA (AT) (Ins) No. 110 of 2017 decided on 15.11.2017 titled as Mr. T. Vinayak Ravi Reddy Vs. Canara Bank & Anr. in which this court had passed the following order:-

"1. In view of the decision of the Hon'ble Supreme Court in Innoventive Industries Vs. ICICI Bank Ltd. – 2017(11) SCALE 4, an application for substitution has been filed by the aggrieved person Mr. T. Vinayak Ravi Reddy shareholder and Director of the Corporate Debtor with prayer to substitute him (Mr. T. Vinayak Ravi Reddy) as the Appellant and to transpose the Corporate Debtor -Deccan Chronicle Holdings Ltd through Interim Resolution Professional as 2nd Respondent.

2. Having heard learned Counsel for the Appellant and learned counsel for the Respondent, the application for substitution is allowed. Let Mr. T. Vinayak Ravi Reddy be substituted as Appellant. The Corporate Debtor “Deccan Chronicle Holdings Limited” through Internal Resolution Professional be transposed as 2nd Respondent. I.A. No. 783 of 2017 stands disposed of.”

13. She has further submitted that in the case of Innoventive Industries Ltd. Vs. ICICI Bank (2018) 1 SCC 407 the Hon’ble Supreme court had held that the appeal on behalf of the Company is not maintainable but the said case was not dismissed on that score.

14. On the other hand, Counsel appearing on behalf of the Respondent, while contesting, both the appeal and the application, on the ground that it has not been duly filed by the competent person and the application I.A No. 4056 of 2025 cannot be filed at this juncture, has submitted that the appeal filed by the CD, per se is not maintainable and has relied upon the observation made by the Hon’ble Supreme court in the case of Innoventive Industries Ltd. (Supra) in which it has been categorically held that once the insolvency professional has been appointed to manage the company, the CD cannot maintain the appeal on behalf of Company. He has also relied upon a decision of this court rendered in the case of Krystal Stone Exports Ltd. (supra) in which the following order was passed:-

“16.10.2024: This appeal is directed against the order dated 03.05.2024 by which an application filed under Section 7 of the Code, 2016 by Stressed Assets Stabilization Fund (Financial Creditor) against Krystal Stone Exports Ltd. (Corporate Debtor) has been admitted.

2. The appeal has been filed by the Corporate Debtor, namely, Crystal Stone Exports Ltd. through one of its directors Mr. B.D Agarwal who has been authorised by a board resolution dated 01.12.2023.

3. In the reply to the appeal, a preliminary objection has been raised about the non-maintainability of the appeal on the ground that it has been filed by the CD through its director who has been authorised by the board resolution dated 01.12.2023.

4. It is alleged that the Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank & Anr.*, Civil Appeal No. 8337-8338 of 20217 had held that "According to us, once an insolvency professional is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the company. In the present case, the company is the sole appellant. This being the case, the present appeal is obviously not maintainable"

5. Faced with this averment in the reply, Counsel for the Appellant has submitted that this is a defect in the appeal and the same is not maintainable at the instance of the CD but he has submitted that defect can be cured by filing an application.

6. In this regard, Counsel for the Respondent has submitted that once the appeal has been filed it cannot be cured by any of the application because the question of limitation shall also arise. The present appeal per se is not maintainable.

7. In view of the aforesaid facts and circumstances, we are of the considered opinion that admittedly the appeal has been filed by the CD through its director on the basis of the board resolution dated 01.12.2023 and in view of the decision rendered in the case of *Innoventive Industries Ltd. (Supra)* the appeal at the instance of the CD against the order of admission passed under Section 7 of the Code is not maintainable.

8. Thus, the present appeal is hereby dismissed. No costs."

15. Counsel for Respondent has also submitted that the word used in Section 61 is not only person but also the 'aggrieved person'. It is submitted that the CD being a company may be a person as defined in Section 3(23) but the appeal can be maintained only by a person who is aggrieved. It is submitted that once the application under Section 7 is admitted, IRP is appointed and board of director of the CD is suspended. The CD itself, on its own, cannot challenge the order of the admission because the control of the

CD vests with the IRP as soon as the order is passed admitting the application under Section 7 or 9 of the Code. It is also submitted that the application bearing I.A No. 4056 of 2025 cannot be allowed at this stage because the application is filed after a period of one and half year while the limitation for filing the appeal is only 30 days from the date of passing of the order which was passed in this case on 13.02.2024. It is submitted that the appeal has to be essentially filed by the suspended director of the CD within the period of 30 + 15 days as provided under Section 61 and once the limitation has expired it cannot be extended even by applying Article 142 of the Constitution of India as has been held in the case of V. Nagarajan Vs. SKS Ispat & Power Limited & Ors., Civil Appeal No. 3327 of 2020 and National Spot Exchange Ltd. Vs. Anil Kohli, Civil Appeal No. 6187 of 2019.

16. We have heard Counsel for the parties and perused the record with their able assistance.

17. While admitting the application filed under Section 7, the Tribunal appointed Mr. Gyaneshwar Sahai as the IRP. The appeal has been filed by the CD. The memo of parties of the appeal is reflected as under:-

“DHARA CEMENTS (INDIA) PRIVATE LIMITED

CIN: U26941GJ2008PTC055352

Registered office at:

M/s Dhara Cement (India) Pvt Ltd

At Gadu, TA-Khedbrahma, Sabarkantha-383255,

Gujarat, India

.... APPELLANT

VERSUS

DINESHBHAI KHIMJIBHAI PATEL

148, Shukla Pole, Matar, TA Matar,

Kheda-387530, Gujarat, India.

.... RESPONDENT”

18. Section 61 of the Code confers a right of appeal to the Appellate Authority. The relevant part of Section 61 is reproduced as under:-

“(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”

19. According to the aforesaid provisions, the appeal has to be filed by a aggrieved person. The appeal has been filed only by the CD and it has been held in the case of Innoventive Industries (Supra) that such an appeal is not maintainable and the same view has been taken by this court in the case of Krystal Stone Exports Ltd. (Supra). The order relied upon by the Appellant in the case of Falcon Tyres Ltd. (Supra) is only to the extent that the Appellant in that case was allowed to file the application for substitution i.e. by a shareholder and director and in the case of T Vinayak Ravi Reddy (Supra) in which the application was filed for substitution of the Appellant by the aggrieved person T. Vinayak Ravi Reddy as shareholder and director of the CD as the appellant and to transpose the CD through IRP as Respondent No. 2. Whereas in the application bearing I.A No. 4056 of 2025 it has been urged

that the Appellant may be allowed to make necessary amendment and make representation of the Appellant Company through the suspended director. The Appellant has also wrongly mentioned in the application i.e. IA No. 4056 of 2025 that this Court had given the direction for amendment rather in the order dated 07.07.2025 the Appellant had taken time to file an appropriate application to pursue this appeal by the suspended director of the CD.

20. Be that as it may, the application for amendment is also highly belated as it has been filed after a period of more than a year, therefore, keeping in view the entirety of circumstances, we do not find merit in the submission of the Appellant either for the purpose of maintaining the appeal at the instance of the CD (Company Itself) or in the application bearing I.A No. 4056 of 2025. Hence, the appeal as well as the application are hereby dismissed. Leaving the parties to bear their own costs.

I.As, if any, pending is/are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

New Delhi
29th August, 2025
Sheetal