

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

Company Appeal (AT) (Insolvency) No. 1075 of 2021

IN THE MATTER OF:

Govind Singh

...Appellant

Versus

Naina Rajkumar Bansal & Anr.

...Respondents

Present:

For Appellant:

**Mr. Sanjay Rathi, Mr. Manish Kumar Shekhari, Ms.
Anisha Mahajan, Advocates**

For Respondent:

**Ms. Sunita Yadav, Advocate for R1
Mr. Gautam Singhal, Advocate for R2 and Mr.
Mukesh Chand Jain, RP, R2**

ORDER
(Virtual Mode)

(ORAL)

Per: Justice Rakesh Kumar Jain.

27.07.2022: This appeal is directed against the order dated 10.12.2021 by which the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court -III), while entertaining an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 (in short 'Rule') has passed the order of admission, while proceeding ex-parte against the Corporate Debtor and appointed Interim Resolution Professional and declared the moratorium in terms of Section 14 of the Code.

2. The Corporate Debtor has filed this appeal, inter alia, on the issues, namely, that it has wrongly been proceeded against ex-parte and the Adjudicating Authority had no jurisdiction to entertain and to admit the

application filed under Section 9 of the Code as the amount involved is Rs. 27,49,090/- which is less than the threshold of Rs. 1 Crore and that there is a pre-existing dispute.

3. Counsel for the Appellant has submitted that it was wrongly proceeded against ex-parte by the Adjudicating Authority as according to him when the case was adjourned on 22.09.2021 for 29.10.2021, the date was wrongly noted as 29.12.2021 by him in his diary. In respect of the order dated 03.12.2021, it is submitted that the Appellant was never served. He further submitted that the application was filed on 02.12.2020 after the amendment dated 24.03.2020 in Section 4 whereby the threshold of Rs. 1 Crore has been fixed and was not maintainable even if the notice under Section 8 was issued on 15.01.2020. It is thus argued that the Adjudicating Authority has committed a patent error while entertaining the application filed under Section 9 of the Code in violation of the provision of Section 4 of the Code.

4. Counsel for Respondent No. 1 has submitted that the Appellant has rightly been proceeded against ex-parte because all the orders passed by the Adjudicating Authority were uploaded on its website and might have been downloaded by the Appellant or his Counsel but a lame excuse has been made that the date was wrongly entered in his case diary as 29.12.2021 instead of 29.10.2021. As regards the maintainability of the application under Section 9 of the Code before the Adjudicating Authority in view of the bar created in Section 4 of the Code vide amendment dated 24.03.2020 is concerned, it is submitted that since the notice under Section 8 was issued on 15.01.2020 or the default had occurred before the notification, therefore,

the amendment would not apply. However, no precedent is cited to support her arguments.

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

6. Insofar as the issue as to whether the Appellant has wrongly been proceeded against ex-parte is concerned, it would be sufficed to say that the Appellant had already appeared after the service before the Adjudicating Authority on 22.09.2021 which is also admitted by the Counsel. The only lame excuse presented before us is that the date for which the case was adjourned on 29.10.2021 was wrongly mentioned in his case diary as 29.12.2021 instead of 29.10.2021.

7. However, Counsel for the Appellant has failed to explain the order dated 03.12.2021 in which it has been categorically mentioned that the Respondent No. 1 was duly served. The said order is reproduced as under:-

“Counsel for the Operational Creditor is present. There is no representation on behalf of the Corporate Debtor. Counsel for the Operational Creditor submits that he has complied with the order dated 29.10.2021 by sending once again the present Petition by all means on the Corporate Debtor.

In this connection, he has filed proof of service along with an affidavit. We have gone through the said documents and it is confirmed that the present Petition has been duly served on the Corporate Debtor against proper acknowledgement.

In addition, we have also seen the Petition along with proof of service of Petition at the time of initial filing of the Petition before this Tribunal. From the said proof of service, it is seen that the Petition was firstly served on company on 03.12.2020 and the Directors on 04.12.2020 against proper proof of delivery. From the above it is made clear that the Corporate Debtor in the present case is intentionally avoiding the proceedings initiated by Operational Creditor under Section 9 of IBC.

Accordingly, this Tribunal proceeds ex-parte against the Corporate Debtor and directs the Counsel for the Operational

Creditor to make his final submissions about the present application.

We have heard the Counsel for the Operational Creditor in detail and gone through the present application for the purpose of initiation of CIRP against the Corporate Debtor.”

8. Thus, from the aforesaid facts, we are satisfied that the Appellant did not deliberately appear before the Adjudicating Authority on the date when the case was taken up for hearing on 29.10.2021 and 03.12.2021 and was thus, rightly proceeded against the ex-parte. The Appellant, instead of, filing an application before the Adjudicating Authority for setting aside the ex-parte order has preferred the present appeal in which a lame excuse has been made for the purpose of setting aside not only the order dated 03.12.2021 but also the impugned order by which the application filed under Section 9 has been admitted. In view, thereof, the plea raised by the Appellant that it was wrongly proceeded against ex-parte is hereby rejected.

9. Now, we come to the second issue raised in this case about the maintainability of the application filed under Section 9 of the Code before the Adjudicating Authority. In this regard, it will be worthwhile to refer to Section 4 of the Code which is reproduced as under:-

4. Application of this part. (1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees:

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one Crore rupees, for matters relating to the pre-packaged insolvency resolution process of corporation debtors under Chapter III-A.

10. It is pertinent to mention that the amendment in Section 4 was brought on 24.03.2020 and the amount of default has been increased from 1 lakh to 1 Crore. Admittedly, the application under Section 9 which is on record at Pg. 59 shows that the amount claimed is Rs. 27,49,090/- which is far less than Rs. 1 Crore. This Application has been filed on 02.12.2020 much after the amendment was brought in the statute on 24.03.2020. The only argument raised by Counsel for Respondent No. 1 is that the statutory notice, for the aforesaid amount was given on 15.01.2020 in terms of Section 8 of the Code but the fact remains that the application under Section 9 was not filed before the amendment dated 24.03.2020 rather it was filed after the amendment came into being and the threshold was changed by Rs. 1 lakh to 1 Crore. The argument that threshold has to be seen on the date of issuance of statutory notice may appear attractive but it is neither have nor there in view of the fact that the amendment was brought on 24.03.2020 changing the threshold from Rs. 1 Lakh to 1 Crore and the application under Section 9 was filed much thereafter on 02.12.2020.

11. Thus, in view thereof, we are of the considered opinion that the order passed by the Adjudicating Authority, without going through this fact, is as to whether the application was maintainable or not, is patently illegal and without jurisdiction. No other point has been raised. In these facts and circumstances, the present appeal is allowed, the order dated 10.12.2021 is set aside on the ground that the application filed under Section 9 before the Adjudicating Authority was not maintainable for not meeting the criteria of threshold, provided in Section 4 of the Code and thus, the Corporate Debtor

is released from the rigours of the CIRP much less the moratorium and status quo ante is ordered to be maintained in respect of the assets of the Corporate Debtor.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)

Sheetal/RR