



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 23.06.2023 AT 11:00 A.M.**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)/130/9/AMR/2022	Main Case	9 of IBC	Southern Power Distribution Company of A.P. Limited Vs. Sudalagunta Sugars Limited
	MA(IBC)/1/2023	Rule 49(2) of NCLT Rules , 2016	Sudalagunta Jayaram Chowdary Vs. M/s. Southern Power Distribution Company of A.P. Limited (OC) & M/s. Sudalagunta Sugars Limited (CD)
	IA(IBC)/248/2023	Rule 11 of NCLT Rules, 2016	Terai Overseas Pvt Ltd Vs. Mrs. Gaddam Sritha Shireen, IRP

ORDER

MA(IBC)/1/2023: This application is allowed, vide separate orders.

IA(IBC)/248/2023: Issue notice to Respondents by informing the next date of hearing. Proof of service shall be filed by 13.07.2023

Main CP posted for hearing on 13.07.2023.

Sd/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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MA(IBC)/1/2023
In
CP (IB)/130/9/AMR/2022

Under Rule 49(2) of the National Company Law Tribunal Rules, 2016

AND

In the matter of M/s. SUDALAGUNTA SUGARS LIMITED

Between:

Mr.Sudalagunta Jayaram Chowdary,
S/o. Mr. S. Panchala Naidu,
Aged about 74 years, Occ: Business
R/o. H.No.20G, Door No.19-3-20/G1,
Kakatiya Nagar, Tirupathi,
Chittoor District, AP – 517501.

--- Applicant/Suspended Director of the CD

And

1. M/s. Southern Power Distribution Company of A.P. Limited,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati,
Chittoor District, Andhra Pradesh – 517503
Email ID: cmd@apspdcl.in;
--- 1st Respondent/Operational Creditor
2. M/s. Sudalagunta Sugars Limited,
Mayura Nagar, Katur Post, B.N. Kandriga Mandal,
Andhra Pradesh – 517644.
Represented by its IRP, Mrs. Gaddam Sritha Shireen
Email ID: gsshireenip@gmail.com
---2nd Respondent/Corporate Debtor



Date of Pronouncement of Orders: 23.06.2023

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant : Mr.T.V.L.Narasimha Rao, Advocate

For Respondent No.1 : Ms. Sarvani Desiraju, Advocate

ORDER

Per: Justice Telaprolu Rajani, Member Judicial

1. This is an application filed under Rule 49(2) of NCLT Rules, 2016 by the Applicant/ suspended director of the Corporate Debtor (CD) seeking to set aside the *ex parte* order dated 10.04.2023 passed in CP(IB)/130/9/AMR/2022 admitting the CD into Corporate Insolvency Resolution Process (CIRP).
2. The facts briefly, as mentioned in the Application, are as follows:
 - i. The CD is a public limited company being closely held family concern having excellent track record of positive credit worthiness and credentials for more than 25 years and the CD paid nearly a sum of Rs.300 crores to its institutional creditors in the past 25 years towards interest, bank charges and other debits and accommodated nearly 700 persons in direct employment and 10,000 persons in indirect employment comprising farmers, transporters, labours, during the period of its operations. The CD



has fallen into debt trap due to the factors beyond the control of management.

- ii. The Company Petition CP(IB)/130/9/AMR/2022 is filed u/s.9 of the IBC, 2016 by R1 /OC against R2 during December, 2022 alleging default in discharging the debt of Rs.29,42,38,402/- by R2/CD. Vide order dated 03.01.2023, this Tribunal ordered notice to the CD and posted the matter to 30.01.2023.
- iii. Vide order dated 30.01.2023, considering the representation of the counsel for R1 that the notice served on the CD was returned with an endorsement “addressee left”, the Tribunal permitted R1 to issue fresh notice to the CD and posted the matter posted to 20.02.2023. Vide order dated 20.02.2023, this Tribunal directed the Counsel for R1 to take notice by way of substitute service through paper publication in two daily newspapers since the notice served on the CD was again returned with an endorsement “factory is closed. For filing compliance, the matter was posted to 14.03.2023. On 14.03.2023, the counsel for R1 filed the copies of paper publications and the matter was posted to 30.03.2023. Vide order dated 30.03.2023, CD is set exparte since none appeared for the CD.
- iv. Vide order dated 10.04.2023, this Tribunal admitted the CP(IB)/130/9/AMR/2022 and Mrs.Gaddam Sritha Shireen was appointed as Interim Resolution Professional (IRP).



- v. The IRP made publication of Form-A dated 12.04.2023 in Prajasakthi Telugu daily and Financial Express English daily on 13.04.2023 inviting claims from various financial and operational creditors. The above developments with respect to CP (IB) /130/9/AMR/2022 have come to the knowledge of the applicant on 13-04-2023 from Mr.Mehdi, Chief Manager, SBI, Hyderabad.
- vi. It is stated that, R1 did not make any attempt to ensure the service of notice to Mr. Y.V. Krishna Rao, President of the CD/R2 who is still staying in the quarters of the CD and accepting the notices/postal envelops, though the factory of the CD was closed w.e.f. June, 2019.
- vii. The paper publication done once during the period between 20.02.2023 and 14.03.2023 could not come to the cognizance of the board of directors of the CD due to the following reasons:
- a) One of the suspended directors -cum- the wife of the Managing Director, who is aged 72 years, has suffered from severe fracture on 05.11.2022 and has been under nursing-cum-medical care for the same at Chennai till 07-04-2023. In her medical care, the other two-family directors (suspended) were totally engaged in Chennai;
- b) Also, the suspended board of directors, other than the inured suspended directors, are busily engaged in compromise discussions with various institutional creditors such as SBI,



UBI, Indian Bank and Bank of India and arranging source of funds to pay the compromised dues.

- viii. It is further stated that there are several merits in favour of the CD to oppose the Company Petition filed by R1, which deserves full length adjudication to meet the ends of justice such as:
- a) There are no warranting circumstances for admitting the company petition as the debts of the CD are around Rs.300.00 Crores which are secured with securities worth Rs. 600.00 Crores. The track record of the CD is excellent for more than 25 years.
 - b) There is no operational debt defaulted by the CD/R2 to R1, as R1 cannot fall into the category of 'operational creditor'. In fact, this CD is the operational creditor to R1.
 - c) The claim does not pertain to any claim towards supply of power by R1 and its consumption by the CD.
 - d) R1 did never issue any notice to the CD informing enhancement of wheeling charges from 2% to 28.4% w.e.f. 2002-2003 pursuant to Apex Court's judgment dated: 29.11.2019 delivered in the Civil Appeal No. 4569/2003 of Transmission Corporation of Andhra Pradesh Ltd Vs. Rain Calcining Ltd and others.
 - e) The claim notice dated 29.03.2022 for Rs.47,24,22,301/- arose due to reported increase in the wheeling charges from 2% to 28.4% w.e.f. 200-2003 to 2019-2020 claimed by R1 from the power produced by the CD.



- f) The Company Petition is not maintainable as the claim is time barred by 29-11-2021 u/s 56(2) of the Electricity Act, 2003 which provides the limitation period of 2 years from 29-11-2019.
- g) The Apex Court's judgment dated: 29-11-2019 delivered in the Civil Appeal No. 4569/2003 of Transmission Corporation of Andhra Pradesh Ltd vs. Rain Calcining Ltd and others is not applicable to the case of CD because the PPA dated: 29-01-2000 executed by the 1st Respondent / OC with R2/ CD is for "wheeling and banking facility" from the co-generation project of the CD whereas the Petitioners of above judgment have PPAs with "wheeling facility" alone.
- h) R1 is not clear about its claim because the Company Petition made default claim of Rs.29,42,38,402/- whereas the Demand Notice dated 29.03.2022 made a claim of Rs.47,24,22,301/- against R2 / CD.
- i) All the assets of the CD are under the physical possession of the State Bank of India pursuant to the provisions of SARFAESI Act.
- j) The impugned order is going to upset the apple cart of the CD, sabotaging settlement with several creditors. In the past 3 years, the suspended directors settled various creditors such as ICICI Bank for nearly Rs.11 Crores, DBS Bank for nearly Rs: 17 Crores, United Bank of nearly Rs: 7 Crores, several cane farmers for nearly Rs.25 Crores, advance payment from sugar buyers for nearly Rs.8 Crores.



In the past 3 years, the suspended directors paid Rs: 7.6 Crores to Bank of India, Rs.2.10 Crores to Indian Bank and Rs: 4.60 Crores to Union Bank of India pursuant to court orders.

- k) The impugned order caused sudden break to the about-to-be crystallized deals of the CD with the prospective high net worth buyers of securities within the cognizance and consent of the secured creditors.

Hence, this application for seeking to set aside the exparte order dated 10.04.2023.

- 3. R1 filed counter, denying the contents of the application and further submitting as follows:

- a) R1/operational creditor issued demand notices and reminders calling upon R2/CD to pay the outstanding amount and R2/CD failed to respond or pay the outstanding amounts.
- b) The petition has been filed in respect of wheeling charges payable as per the Agreement executed with the Corporate Debtor, which is a generator. The aforementioned charges were determined by the APERC through the tariff orders and the same were confirmed by the Hon'ble Supreme Court. The CD was also party to the aforementioned Supreme Court proceedings in the batch of appeals which confirmed the said APERC Tariff order. There is no reason whatsoever that can be quoted by the CD/R2



for non-payment of dues, which has been confirmed by the Supreme Court order.

- c) Though notices were issued, R2/ CD failed to pay any amounts towards outstanding dues. Therefore, the respondent was constrained to issue Form-3 dated 25.10.2022 on the registered office address of the R2/CD. Notice dated 25.10.2022 was issued via speed post, to the registered office address of the CD and the same had returned with an endorsement first at “redirected to Mayura Hotel, Tirupati, and finally returned undelivered to the R1/OC and the demand notice was also served on 22.10.2022 through email at the email-id mentioned on the MCA Website, i.e., at mayuragroup@yahoo.co.in, which in itself is sufficient service and that none of the emails had bounced back. Though the demand notice was received, no reply was sent to the R1/OC.
- d) The Company Petition was filed on 26.11.2022 and the copy of the petition was also sent to the R2/CD vide speed post and email addressed to mayuragroup@yahoo.co.in, as is mandatory as per the provisions of the code. The notice via speed post was sent to the registered office address, i.e., Sudalagunta Sugars Limited, Mayura Nagar, Katur Post, B.N. Kandriga Mandal, Andhra Pradesh – 517 644, as recorded and officially available on the MCA Portal. The same was returned back with the endorsement “Return to Sender”: The Factory was closed”.



- e) When the company petition was listed on 03.01.2023, notice was ordered to be issued to the CD. Again, notices were issued vide registered post and email. Notice dated 11.01.2023 was issued and the same was also returned with the endorsement “Return to Sender, Factory Closed”. The same was also served through email dated 18.01.2023 and was received.
- f) On the next date of hearing i.e., on 30.01.2023, though notice was already deemed as served, this Respondent/R1 itself sought permission to take out another notice and the same was ordered by the Tribunal and the matter was posted to 20.02.2023. Again, notice was issued vide letter on 07.02.2023 to the registered office address and the same again came back with the endorsement “Return to the Sender – The Factory is closed”.
- g) On the next date of hearing, i.e., on 20.02.2023, this tribunal directed the OC/R1 for the issuance of newspaper publication in Business Standard (English Daily) and Andhra Jyothi (Telugu Daily) and in compliance of the said order, R1 issued notice in the newspaper dated 07.03.2023. The applicant cannot claim to be unaware of the proceedings, despite the return of notices sent via speed post, as they had been duly notified of the proceedings via emails and newspaper publication. Additionally, the NCLT Portal had an inbuilt auto generating system that notifies the parties by emails, of the filing, proceedings conducted by the Hon’ble Court in the captioned matter and thus, the applicant herein, ought to have received emails via NCLT Portal. Hence, it



cannot be disputed that the applicant was well aware of the filing of the Company Petition against the R2/CD.

- h) Three notices were duly deemed served and in fact served (through email) on the CD. However, they chose not to appear before this Tribunal. Thus, the contention that R1/OC did not cause any attempt to ensure that the notice was served to the one Mr. Y.V. Krishna Rao, President of CD is completely incorrect and if in fact, he was staying at the premises, all notices (3 in No.) will all not come back with the same endorsement. Further, if in fact, the said Mr. Y.V. Krishna Rao is still living and operating from the CD Office, the reason stated that it was only due to ill health of one of the Director's wives that the CD did not appear has to be incorrect.
- i) Therefore, by any stretch of imagination, it cannot be contested that the Applicant herein was not aware of the filing of the captioned company petition against the CD. The Suspended Director of the CD came running to the Hon'ble Court only now upon realizing the seriousness of the IBC proceedings, and that once Insolvency Resolution Professional is appointed as an IRP, the Board of the CD gets suspended and the IRP takes over the management of the CD.
- j) The R2/CD, being a food manufacturing company conducts activities around the clock, signifying the operations of the company. The reason that the wife of the Managing Director



suffered from a fracture on 05.11.2022, and that she was admitted and received medical care at Chennai from 05.11.2022 to 07.04.2023 is also not sufficient or just reason due to the following reasons:

- i) The Company Petition was filed on 26.11.2022 and upon verification of the Annexures 33-63, it was discovered that the medical procedures, treatments and bills enclosed were dated between 05.11.2022 to 19.11.2022, indicating that the said director underwent procedure/treatment at Chennai and was discharged on 19.11.2022, i.e., prior to the filing of the company petition. There is no reason for non-appearance though multiple chances were provided to the CD. The medical prescription and the outpatient bill dated 07.04.2023 is only for a routine check-up.
 - ii) The CD itself conceded that one Mr. Y.V. Krishna Rao, President of CD is staying at the premises of the CD and is handling the affairs of the CD. Hence, it cannot be said that nothing was functional and the CD itself admitted that there are other Directors, who were actively involved in discussing with the banks of the CD and hence they are handling the day-to-day affairs of the CD.
- k. R1 relied upon Another case where a Petition was filed under Order IX Rule 13 of CPC to set aside an ex-parte order after the Applicant's property was put to auction, the Hon'ble Supreme



Court has held in Special Leave Petition (Civil) D.No.1855 of 2020 vide order dated 29.09.2021 that:

19. The summons issued by registered post was received back with postal endorsement of refusal, as would be clear from the order dated 19.02.1997. Sub Rule (5) of Order V Rule 9 of the Code states inter alia that the defendant or his agent had refused to take delivery of the postal article containing the summons, the court issuing the summons declare that the summons had been duly served on the defendant. The order dated 19.02.1997 was thus completely in conformity with the legal requirements. In a slightly different context, while considering the effect of Section 27 of the General Clauses Act, 1897, a Bench of three Judges of this Court in C.C. Alavi Haji Vs. Palapenty Muhammed and Anr2 made following observations.

14. Section 27 gives rise to a presumption that service of notice has been effected when its sent to the correct address sent by Registered post. IN view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it unnecessary to further aver in the complaint that inspite of the return of the notice unserved, it is deemed to have been



served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. (Vide Jagadish Singh V. Natthu Singh 3 State of M.P. Vs. Hiralal & Ors. 4 and V. Raja Kumari Vs. P. Subbarama Naidu Anr. ...”

Pursuant to the order dated 20.02.2023, the Applicant has filed this application wherein the applicant has given absolute flimsy excuse for its non-appearance, that the applicant did not receive the attempted service of notice and it seems as the factory was closed it is possible that the notice went back.

1. The captioned application is filed under rule 49 (2) r/w rule 11 of the National Company Law Tribunal Rules, 2-16 (“NCLT Rules” for short). Rule 49 of the NCLT Rule is as reproduced below:

49. Ex-parte Hearing and disposal:

(1) Where on the date fixed for hearing the petition or application or any other date to which such hearing may be



adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.

(2) Where a petition or an application has been heard ex-parte against respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside *and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit.*

Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against the respondent only, it may be set aside as against all or any of the other respondents also”.

- m. The plain reading of Rule 49 especially sub section 2 of Rule 49 shows that the Tribunal may set-aside the ex-parte order only in circumstances where the party is able to show that the notice was not duly served or that they were prevented by sufficient cause from appearing for the hearing. That this present application is devoid of any of the aforementioned reasons. It is submitted that all the communications and notices were duly served on the



registered office address of the applicant and the official email address of the Corporate Debtor. The Hon'ble Supreme Court, as stated above, has made the aforementioned Judgement in view of such kind of Applicants who file ex parte orders set aside petitions with a sole intention to delay and derail legal proceedings, after intentionally disregarding notice.

- n. As per Section 27 of the General Clauses Act and as confirmed by the aforementioned judgements, an endorsement "Refused or even "House Locked" or "Shop Closed", service has to be presumed and that is exactly what this Hon'ble Tribunal has also done. In view thereof, the Applicant has failed miserably in giving satisfactory reasons as to why they intentionally disregarded the notice of hearing and have failed to substantiate as to why this application ought to even be considered by this Hon'ble Tribunal much less be allowed.
- o. This reply is solely in response to the paras to set aside the order dated 10.04.2023 and no detailed reply is being given to the alleged grounds mentioned in reply to the main company petition. In any event, the grounds mentioned in the reply to the main company petition are all baseless and incorrect. It is baseless to claim that the charges which are towards wheeling services provided by the operational creditor are not operational debt. R2/CD cannot even claim lack of notices received from the R1/OC, when itself is admitting the notices received in March 2022 regarding the wheeling charges. No reply was given nor



payment was made. Further, Section 56 of the Act is not even applicable as the charges do not pertain to the supply of electricity but rather the wheeling charges payable for wheeling services. Also, the CD itself is admitting that the factory is closed and the company is in doldrums and the creditors are seeking repayment.

- p. The Tribunal gave several opportunities to make appearance and plead their case and yet the applicant chose to refuse the notice served upon their registered office. Further, the Tribunal allowed the captioned petition in accordance with the provisions of the Code after hearing R1 and considering the documents on record of the captioned company petition. In such circumstances, when the applicant has failed to show any credible reason for recall of the exparte admission order dated 10.04.2023, this application is liable to be dismissed.

4. Applicant filed rejoinder, stating that R1 preferred Civil Appeal No. 7079/2003 against the order passed by the Hon'ble High Court at Hyderabad in favour of the R2. The Hon'ble Supreme Court allowed the above appeal against R2 along with several other appeals while there is a difference in the PPA of R2 and the PPAs of the Respondents of the other batch appeals. The PPA of R2 is for "wheeling and banking facilities" whereas the PPAs of others is reportedly for only "wheeling facilities". R1 is expected to send separate demand notice on the strength of Supreme Court Judgment



within a period of 2 years from the date of judgment in terms of Section 56(2) of the Electricity Act, 2003.

5. R1 issued Form 3 dated 25.10.2022 to the registered office of R2 which was closed since April, 2022 and hence, it was returned as undelivered. Though, R1 claimed to have sent the demand notice to the email ID mayuragroup@yahoo.co.in, they did not file the screenshot of the same. The said email is not opened by R2 since April, 2022, when the CFO, Mr. Rama Murthy, who was alone holding the password, left the organization without revealing the password to the suspended directors. R1 claimed to have served the demand notice on 22-10-2022 through email whereas the demand notice is dated 25-10-2022. Transmission of demand notice through email cannot constitute “due service of notice”. It would constitute “proof of issuance of notice” but “not service of notice unless the email inbox is opened”. The dispatch of company petition to the factory address could not come to the hands of the suspended directors as the factory was in closed status under the possession of the SBI since 05-01-2022.
6. The notices as ordered by this Bench were returned undelivered when the factory was closed without coming to the cognizance of the suspended directors and the paper publication did not come to the cognizance of the suspended directors as they were staying in Chennai during the relevant period, for medical treatment of one of the suspended directors and R1 could not paste the public notice to the factory gate to the cognizance of the suspended directors through



passerby. Transmission of notice ordered by this Bench through email cannot constitute “due service of notice”. It would constitute “proof of issuance of notice” but “not service of notice unless the email inbox is opened”. R1 is beating around the bush without answering why the notice was not attempted to be served to Mr. Y.V. Krishna Rao, president of R2/CD who has been residing in the precincts of R2. On 19.04.2023, R3/IRP inspected the R2 factory in the presence of Mr. Y.V. Krishna Rao, but R2 failed to trace Mr. Y.V. Krishna Rao. R2 was aware of the NCLT proceedings and rushed to NCLT after realizing the seriousness. On 13-04-2023, the Applicant came to know about the NCLT proceedings through Mr. Mehdi, Chief Manager of SBI, SAMB, Kachiguda, Hyderabad.

7. The judgment of Apex Court dated 29.09.2021 in SLP (CIVIL) D No. 1855/2020 is in respect of Order IX Rule 13 of CPC whereas their application is under Rule 49(2) of the NCLT Rule, 2016. Further, in the above Supreme Court case the envelop was returned undelivered with the endorsement of refusal by the addressee. In the present case the envelops were returned undelivered due to closure of R2 lying in the possession of SBI. Further, service of notice in IBC cases is totally different from service of notice in other cases. The Apex Court’s decision in CC Alavi Haji Case vide (2007) 6 SCC 555 cannot be applied to this case because, there is no refusal of notice and the suspended directors or their representatives are not available in R2 premises not on their own volition but as R2 precincts have been in the custody of SBI since 05-01-2022, and status of “house locked” or



“shop closed” is not out of the actions of the suspended directors but due to the action of the SBI and status of “addressee not in station” is not applicable to our case because Mr. Y.V. Krishna Rao, president of R2 is residing in the precincts of R2.

8. Heard both the counsel and perused the written submissions filed by either side which are almost reiteration of the pleadings. The contention of the Applicant is that the notices sent to him were not served on him inspite of he being very much present at the given address. He submits that he has been residing in the premises, though he was not in-charge of the Company and he has been receiving notices from others on the same address. He also accompanied the IRP when she visited the premises on 19.04.2023 which speaks about his presence in the given address. He further contends that the notice sent on the email could not be received by him, as the person who was operating the e-mail left the Company and he alone has the password. He contends that the Respondent did not share the screenshot of the email transmission to intimate its claim. He further submits that all the group entities are defunct after the year 2019.
9. The counsel for the Respondent on the other hand contends that according to Section 27 of the General Clauses Act, the issuance of the notice on the given address has to be deemed as proper service. She relies on the judgment of the NCLAT, Chennai in *Comp App (AT) (CH) (Ins) No.446/2022 & For Stay IA No.1132/2022 between DCB Bank Limited vs. Mr.R.Sadasivsan &Others* wherein it was held that the “when notice is sent to the proper and correct address of



the Respondent, where he is actually residing or carries on business, there arises a presumption of due service”. The said proposition no doubt is correct. But the presumption continues only till the same is rebutted by the concerned.

10. The Applicant contends that he was not in the given address as he was attending on his wife who was not well. The said contention is refuted by the counsel for the Respondent stating that the dates mentioned in the medical record pertain to the period prior to the issuance of the notice. Be that as it may, the fact that the applicant was along with IRP when he visited the premises is not refuted, which speaks that the applicant was present at the address. The contention of the applicant that since he was not actively participating in the management of the CD and he was just residing in the premises, he might not have been considered as residing in the said premises and hence the Postal Department might have recorded the premises as closed since the company was not functioning.
11. As regards, the jurisdiction of recalling the order, the Applicant relies on the same judgment wherein by relying on the judgment of the Allahabad High Court judgment in the matter of *Khan Enterprises vs. National Company Law Tribunal and others*, it was observed that it was held by the Allahabad High Court for forming an opinion that Rule 11 of NCLT Rules, cannot be used seeking recall /reviewing of its orders, they have noticed that what the CD was seeking was to recall *ex-parte* order which power was specifically conferred on the Adjudicating Authority under Rule 49(2). When power is specifically



conferred under the rule, there was no question of exercising any review jurisdiction in the facts of the present case. It was held that the Adjudicating Authority was fully competent to recall ex-parte order in exercise of its jurisdiction under Rule 49 sub-rule (2). It was also observed that in the said judgment it was clearly mentioned that the procedural review can very well be availed, if there is any procedural defect in passing the order. It was held that in the said case, there was procedural defect, since service was not affected on the CD. The same analogy applies to this case also. When the Applicant contends that he was residing in the said address and when he produces his Aadhar Card in proof of the same one cannot deny the fact that he resides in the said premises, in which circumstance, the observation made by the postal authority that the factory was closed does not apply to the residence of the applicant residing in the same premises of the factory which is infact closed. Hence it has to be considered as an error on the part of the postal authorities, to identify the presence of the applicant who was residing in the said premises. For such an error, the opportunity for applicant to contest the case cannot be denied. It would always be better for any case to be decided on merits.

12. A memo dated 21.06.2023 is filed online by R1 along with a judgment of NCLT, Hyderabad bench in IA No.984/2022 in CP(IB)/516/9/HDB/2019 seeking to take the same into consideration. It can be seen that the circumstances under which the applicant therein remained exparte are totally different from those in this case.



*NCLT Amaravati Bench
MA(IBC)/1/2023 in CP (IB)/130/9/AMR/2022*

13. Hence, in view of the above, this application is allowed and the exparte order dated 10.04.2023 is set aside.

Sd/- Dated 23/6/2023

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu