

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 8178 of 2023

STATE BANK OF INDIA ASSISTANT MANAGER

Appellant(s)

VERSUS

INDIA POWER CORPORATION LIMITED

Respondent(s)

O R D E R

1. This Statutory Appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 (for short, 'IBC') is at the instance of the appellant - State Bank of India seeking to challenge the order passed by the National Company Law Appellate Tribunal (NCLAT), Chennai dated 04.10.2023 by which the Appellate Tribunal dismissed the appeal filed by the State Bank of India and thereby affirmed the order passed by the National Company Law Tribunal (NCLT), Hyderabad.

2. The facts giving rise to this appeal may be summarized as under:-

i) In February, 2020, the Bank filed an application under Section 7 of the IBC before the NCLT.

ii) In November, 2021, the respondent - herein India Power Corporation Limited (IPCL) filed its counter affidavit before the NCLT.

iii) On 13.06.2022, the State Bank of India filed its rejoinder affidavit. However, in filing the rejoinder affidavit, there was a delay as according to the Bank, there was one money

suit filed by the respondent - herein.

iv) In such circumstances, the Bank had to file IA No.1547/2022 praying that the delay in filing the rejoinder affidavit may be condoned.

v) The NCLT, Hyderabad vide order dated 30.01.2023 condoned the delay with a direction that any factual assertions pleaded in the rejoinder shall not be taken into consideration while deciding the Section 7 application.

vi) The order passed by the NCLT came to be challenged before the National Company Law Appellate Tribunal.

vii) The Appellate Tribunal dismissed the appeal filed by the Bank vide order dated 04.10.2023.

3. In such circumstances, the Bank is here before this Court by way of this appeal.

4. We heard Mr. Tushar Mehta, the learned Solicitor General of India appearing for the State Bank of India and Mr. Anirban Bhattacharya, the learned counsel appearing for the respondent - IPCL.

5. We are informed that since the Bank was not permitted to put forward its case as stated in the rejoinder affidavit, the NCLT vide order dated 30.11.2023 rejected the Section 7 application filed by the Bank excepting what was stated by the Corporation in their reply.

6. Rule 42 of the National Company Law Tribunal Rules, 2016 reads thus:-

"42. Filing of Rejoinder.- Where the respondent states such additional facts as may be necessary for the just

decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent."

7. The learned Solicitor General of India invited the attention of this Court to a decision in *Dena Bank vs. C. Shivakumar Reddy and Another* (2021) 10 SCC 330, wherein this Court has taken the view that in the absence of any express provision which prohibits or sets a time-line for filing of additional documents, there is no bar to the filing of documents over and above those documents initially filed with Section 7 petition. The Court further clarified that it is permissible to file any document until a final order either admitting or dismissing the Section 7 application is passed. The relevant part of the said decision of this Court reads thus:-

"71. Since a financial creditor is required to apply under Section 7 IBC, in statutory Form 1, the financial creditor can only fill in particulars as specified in the various columns of the Form. There is no scope for elaborate pleadings. An application to the adjudicating authority (NCLT) under Section 7 IBC in the prescribed form, cannot therefore, be compared with the plaint in a suit. Such application cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a court of law.

x x x x x

142. There is no bar in law to the amendment of pleadings in an application under Section 7 IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 IBC in Form 1. In the absence of any express provision which either prohibits or sets a time-limit for filing of additional documents, it cannot be said that the adjudicating authority committed any illegality or error in permitting the appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the adjudicating

authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the adjudicating authority to entertain and/or to allow the request of the appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal". (Emphasis supplied)

8. We are of the view that the both NCLT and NCLAT committed an egregious error in taking a very technical or rather pedantic view of the matter.

9. Having permitted the Bank to file their rejoinder after condoning the delay, it was too much for the NCLT to say that the Bank shall not be permitted to rely on any assertions made in the rejoinder. It was expected of the NCLAT to correct such an error. Unfortunately, the Appellate Tribunal also fell into the same error.

10. We are further informed that against the final order passed by the NCLT, Hyderabad rejecting the Section 7 application, now the Bank is in appeal before the NCLAT.

11. In view of the aforesaid, this appeal succeeds and is hereby allowed.

12. The impugned order passed by the NCLAT is set aside.

13. As we have set aside the order passed by the NCLAT, the matter should now go back to the NCLT for fresh consideration of Section 7 application.

14. In this regard, the NCLAT shall pass appropriate order in the pending appeal filed by the State Bank of India keeping in mind our observations in this order.

15. However, we clarify that we have otherwise not expressed any opinion on the merits of the case.

16. The Section 7 application of the Bank shall now be decided by the NCLT afresh strictly in accordance with law on its own merits.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
14TH FEBRUARY, 2025.

ITEM NO.61

COURT NO.13

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8178/2023

STATE BANK OF INDIA ASSISTANT MANAGER

Appellant(s)

VERSUS

INDIA POWER CORPORATION LIMITED

Respondent(s)

Date : 14-02-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s) :

Mr. Tushar Mehta, Solicitor General

Ms. Surabhi Khattar, Adv.

Mr. Madhav Kanoria, Adv.

Ms. Neha Shivhare, Adv.

Mr. Sriharsh Raj, Adv.

Mr. Sumit Attri, Adv.

For Respondent(s) :

Mr. Anirban Bhattacharya, AOR

Mr. Rajeev Chowdhary, Adv.

Ms. Priyanka Bhatt, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeal is allowed, in terms of the signed order.

(VISHAL ANAND)

ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)

COURT MASTER (NSH)

(Signed Order is placed on the file)

