

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 313 of 2022

In the matter of:

**Yogesh Goswami
[Erstwhile Director of
Mabsoot Buildhomes]**

....Appellant

Vs.

L & T Finance Ltd. & Anr.

....Respondents

Present

For Appellant: Mr. Ananvay Anandvardhan, Mr. Shantanu Singh & Mr. Ravi Sehgal, Advocates.

For Respondents: Mr. Arvind Nayar, Sr. Advocate with Mr. Akshay Joshi, Mr. Ajay Bhargava, Ms. Wamika Trehan, Ms. Maithli Moondra, Advocates for R-1.

Ms. Pooja M. Saigal, Mr. Anshul Bajaj, Simrat Singh Pasay, Mr. Chaitanya Pandey, Advocates for R-2/ IRP.

**ORDER
(Virtual Mode)**

20.05.2022: Heard Learned Counsel for the Appellant as well as Learned Counsel Mr. Arvind Nayar, appearing on behalf of the Respondent.

This Appeal has been filed against the Order dated 17th February, 2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-IV) in CP (IB) No. 778/(ND)/2021 by which Section 7 Application filed by the Respondent (Financial Creditor) has been admitted.

2. On Section 7 Application, the Adjudicating Authority passed an Order dated 23.12.2021 which is to the following effect:

“ORDER: In the present matter, necessary compliance has been made. Let notice be issued to the Respondent. Reply be filed within 14 days with copy in advance to the other side.

At request, matter be taken on 17.02.2022.”

3. The Notice was issued on Respondent No. 2/the 'Corporate Debtor' on 23.12.2021 which was served later on 31.12.2021. 17.02.2022 was the first date after serving of Notice on which date the Learned Adjudicating Authority proceeded to admit the Application. Which is mentioned at Page- 43.

"9. Notice by the Authority was issued vide order dated 23.12.2021. Despite the notice been served to the respondent corporate debtor neither they appeared nor filed its reply objecting the said petition."

4. Suspended Director of the Corporate Debtor aggrieved of the order has come up in this Appeal. Learned Counsel for the Appellant submits that on 17.02.2022 which was the first date, the Learned Counsel for the Respondent/'Corporate Debtor' appeared and made a request for time to file the 'Vakalatnama' as well as the 'Reply' also. He submitted that the said request was not considered and court reserved the Order and subsequently, the Order dated 17.12.2022 was uploaded.

5. Shri. Arvind Nayar, who appeared on behalf of the Respondents submitted that after 23.12.2021, there was 56 days' time available for the 'Corporate Debtor' to file Reply, but no Reply was filed. Shri. Arvind Nayar also submitted that Learned Counsel for the 'Corporate Debtor' did not have the 'Vakalatnama', hence, the Court did not record his appearance.

6. First day on which the Notice was issued was on 23.12.2021. Notice was served on 31.12.2021 and 17.02.2022 was the first date which was fixed thereafter of by the Court. An Affidavit has been filed with this appeal by Mr. Palash Singhai who is the Counsel who appeared on 17.02.2022 before the Learned Adjudicating Authority, wherein, in paragraph 5 following facts has been stated:

“That on 17.02.2022, when the said matter was taken up for hearing, the deponent entered appearance for the first time on behalf of the Corporate Debtor before the Ld. NCLT, Special bench, New Delhi and had requested to grant some time to file vakalatnama and reply. However, the said request was denied and the order was reserved without hearing the parties on merits.”

7. The present is the case where the counsel appeared and made a request for filing 'Vakalatnama' and 'Reply'. Learned Adjudicating Authority has simply observed in paragraph 9 that despite notice was served, no one has appeared. We have no reasons to disbelieve the Affidavit filed by the Counsel in this Appeal, that he appeared and made a request to file the 'Vakalatnama' and 'Reply'. We are of the view that at least one opportunity ought to have been given to the Respondent to file his Reply. The Order dated 17.02.2022 being virtually *Ex-Parte* deserve to be set aside. The Corporate Debtor is allowed one week time from today to file its 'Reply' before the Learned Adjudicating Authority and the Financial Creditor may also file their Rejoinder within two weeks, thereafter.

8. Further, with regard to the amount deposited by the Financial Creditor in pursuance of the Para-16 of the impugned order Learned Adjudicating Authority shall pass appropriate Order in the pending proceedings. Learned Counsel for the Parties are at liberty to make an Application for fixing a date after three weeks before the Learned Adjudicating Authority.

9. We make it clear that we have not expressed any opinion on the merits of this case.

10. Learned Counsel for the Appellant shall also make payment of a cost of Rs. 10,000/- to the Financial Creditor within a period of one week.

11. Appeal is hereby disposed of.

[Justice Ashok Bhushan]
Chairperson

[Ms. Shreesha Merla]
Member (Technical)

[Mr. Naresh Salecha]
Member (Technical)

Sim/gc