

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 804 of 2022**

[Arising out of Order dated 08.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Guwahati Bench in IA No. 43 of 2021 in CP (IB) No. 09/GB/2019]

In the matter of:

**Anand Varma, Advocate,
29/1201, Lotus Boulevard, Sector 100,
Noida, District Gautam Buddha Nagar
Vs.**

...Appellant

Piyush Periwal & Ors.

...Respondents

**For Appellants: Mr. Maninder Singh, Mr. Krishnendu Datta,
Senior Advocates with Mr. Kaustubh Prakash,
Advocate**

**For Respondents: Mr. Abhijit Sarkar, Mr. Rishi Kumar Singh
Gautam, Mr. Manish Verma, Advocates for R1.
Mr. Abhijeet Sinha, Advocate for R4.**

J U D G M E N T

Ashok Bhushan, J.

1. The Appellant has filed this Appeal for expunging the remarks made against the Appellant in the order dated 08.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Guwahati Bench, Guwahati in I.A (IBC)/43/2021 in C.P. (IB)/09/GB/2019. The Appellant had appeared as an Advocate on behalf of the Respondent No.2, the Resolution Professional in C.P. (IB)/09/GB/2019. While allowing the Application I.A (IBC)/43/2021 filed by the Respondent No.1- a member of the Suspended

Board of the Corporate Debtor, certain observations have been made against the Appellant. Challenging the same, this Appeal has been filed. In the Appeal, the Appellant has prayed for following reliefs:-

“RELIEFS SOUGHT

- i. *Expunge the remarks made against the Appellant in the impugned final order dated 08.04.2022 passed by the Hon’ble Adjudicating Authority, Guwahati Bench in I.A. No. 43/2021 in CP (IB) No. 09/GB/2019.*
- ii. *Allow the present appeal in terms of prayer (i).*
- iii. *That this Hon’ble Appellate Tribunal may pass any other or further orders as are required in the facts and circumstances of the present matter and in the interests of justice.”*

2. We need to notice only relevant facts of the case which are necessary for deciding the present Appeal.

2.1. On an Application filed by Financial Creditor- ‘Stressed Assets Stabilization Fund (SASF)’ under Section 7, the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor- ‘National Plywood Industries Ltd.’ by order dated 26.08.2019. The Resolution Professional published Form-G dated 09.11.2019 inviting Expressions of Interest (EOIs). Due to non-receipt of Resolution Plan, Resolution Professional again published Form-G on 27.06.2020 inviting EOIs by 12.07.2020. The Respondent No.1, a member of Suspended Board of Directors and Respondent No.4 (‘PLBB Products Pvt. Ltd.’) have submitted their EOIs. On 27.07.2020, final list of PRAs was published by the Resolution Professional, including Respondent Nos. 1 and 4. A letter was issued by the Resolution Professional

on 14.08.2020 addressed to Appellant a Partner of APT Legal, offering the Appellant to represent Resolution Professional. Committee of Creditors (CoC) on 07.09.2020 approved the engagement of the Appellant as counsel for the Resolution Professional and after 07.09.2020, Appellant started representing Resolution Professional. It was only Respondent No.4 who submitted Resolution Plan which came to be discussed by the CoC in its meeting dated 18.09.2020, 08.10.2020 & 06.11.2020. The Resolution Plan of Respondent No.4 was approved by the CoC and on 12.11.2020, Application was filed by the Resolution Professional before the Adjudicating Authority for approval of the Resolution Plan. On 11.01.2021, the Appellant was approached by one Mr. Shyamal Deb on behalf of 'Damayanti Tea Industries' for filing a Section 7 Application against an entity 'Bochapathar Tea Estate'. An Application under Section 7 of the IBC being CP(IB) No. 5/GB/2021 was filed by 'Damayanti Tea Industries' through its authorised signatory by the Appellant as Advocate for 'Damayanti Tea Industries'. On 10.02.2021, the Adjudicating Authority allowed IA No. 5/2021 filed by the Respondent No.1 to submit a Resolution Plan in the CIRP of the Corporate Debtor. The Resolution Plans submitted by Respondent Nos. 1 and 4 were again considered by the CoC in its meeting dated 25-28th May and 01st June, 2021 and Resolution Plan of the Respondent No.4 was approved upon voting. On 06.08.2021, Respondent No.1 filed an I.A No. 43/2021 before the Adjudicating Authority alleging *inter alia* conflict of interest and collusion between Appellant, Respondent Nos. 2, 3 and 4. In the Application, Respondent No.1 has made following prayers:-

“Relief(s) sought:

- 7.1 *An order be made removing the respondent no. 2 as the Resolution Professional in the matter.*
- 7.2 *An order be made setting aside all acts of the RP in which the RP had been instrumental, as unfair, biased, motivated and lacking in transparency.*
- 7.3 *An order be made removing the respondent no. 3 in the matter.*
- 7.4 *An order be made disqualifying the respondent no. 4 as a Resolution Applicant in this matter.*
- 7.5 *Such further or other order or orders be made and/or direction or directions be given as to this Hon’ble Court may seem fit and proper.*
- 7.6 *To grant any further relief that this Hon’ble Court may deem fit and proper for the ends of justice.”*

2.2. The Adjudicating Authority heard I.A. No. 43/2021 and by order dated 08.04.2022 disposed of I.A and issued various directions. The Appellant aggrieved by the prejudicial observations made by the Adjudicating Authority against him has come up in this Appeal and as noted above, in the Appeal, the only prayer is to expunge the remarks made against the Appellant in the order dated 08.04.2022.

3. We have heard Counsel for the Appellant as well as Counsel for the Respondent No.1 and 4. Both the parties have also filed their brief notes of arguments.

4. The order passed by the Adjudicating Authority notices submissions made by the Petitioner (Respondent No.1 before us) in detail. In paragraph 16 of the order, submissions by the Petitioner in respect of Resolution Professional has been noticed. In paragraph 17, submissions by the Petitioner

in respect of Respondent No.3 (Appellant herein) has been noticed and in paragraph 17.3, the Adjudicating Authority has made its own observations. In paragraphs 20.2, 20.3 and 23, observations have been made which are relevant to be noticed here. Following are the observations made in paragraphs 17.3, 20.2, 20.3 and 23:-

“17.3. It is a fact that R3 is the common Advocate for RP and RA i.e. R2 and R4 which is evident from the records and papers submitted by the Registry before us. It is found that R3 was the Advocate for the case filed under Section 7 by the Damayanti Tea Industries, a unit of CCIPL and he was appearing for the said matter till the disposal of the Application on 23/08/2021. The R3 has become the Advocate for both during the period of CIRP. Confidentiality matters in Insolvency proceedings and undertaking the assignments by an Advocate from both the sides during the CIRP under IBC is not justified.

20.2. It is observed that the R1, R2, R3, R4 were entirely focusing on one point in their submissions, pleadings and arguments during the entire proceedings that the jurisdiction of the Hon’ble Adjudicating Authority is limited to the statutory provisions of the Code, which does not vest the Hon’ble Adjudicating Authority with any equity jurisdiction to entertain a challenge against a CoC approved resolution plan. We are well aware of the provisions of IBC and judgments of the Hon’ble Supreme Court in the matter but the fact is that the process of CIRP is tainted from the second roll-out of EOI, then the stages of Commercial wisdom of the CoC and the approval of the Resolution Plan by the CoC do not arise.

20.3. Hence, considering the points mentioned above including the observations made in the points no points no 14 to 20.2 We are of the considered view that the provisions of the I&B Code and Regulations made thereunder have not been complied from the stage of the second EoI. Transparency, Confidentiality and fairness have not been maintained. Conflicts of interests have been established.

23. Considering the submissions of R3 we take a lenient view and prayer made by the Petitioner to proceed in the matter is rejected However it is made clear that one must not lose the site of Code of Professional Ethics while dealings with the matters of Insolvency where time, confidentiality and balancing act matter.”

5. Learned Counsel for the Appellant submits that from the observations made in paragraph 17.3, it is clear that the Adjudicating Authority has observed that the Appellant has appeared for the Resolution Professional in the CIRP of the Corporate Debtor and has also appeared on behalf of the Resolution Applicant (Respondent No.4- ‘PLBB Products Pvt. Ltd.’). The very basis of observations by the Adjudicating Authority that Appellant has appeared for Respondent Nos.2 and 4 is unfounded. Appellant was not representing Respondent No.4 in the CIRP of the Corporate Debtor. The Appellant had filed an Application under Section 7 on behalf of ‘Damayanti Tea Industries’ a separate company and on the basis of factum of the Appellant filing Section 7 Application on behalf of ‘Damayanti Tea Industries’, the Adjudicating Authority has jumped to the conclusion that the Appellant has appeared both for Respondent Nos.2 and 4 which observation is factually incorrect. There was no breach of any transparency nor there was any conflict of interest in appearing of the Appellant for Respondent No.2 in the CIRP of the Corporate Debtor and filing a Section 7 Application on behalf of another Company ‘Damayanti Tea Industries’.

6. Counsel for the Respondent refuting the submissions of the Counsel for the Appellant submits that the promoter of the Corporate Debtor i.e. ‘PLBB

Products Pvt. Ltd.’ whose associate concern are ‘M/s. Chandrabali Commercial (I) Pvt. Ltd.’ (CCIPL) is also promoter of ‘Damayanti Tea Industries’ which is unit of CCIPL. When the Resolution Plan submitted by Respondent No.4 was pending consideration before the NCLT, the Appellant filed Section 7 Application by ‘Damayanti Tea Industries’, hence, the Appellant was representing the Resolution Professional of the Corporate Debtor and also an associate concern of ‘PLBB Products Pvt. Ltd.’ which is clearly conflict of interest.

7. Learned Counsel for the parties placed reliance on few judgments which shall be referred to while considering the submissions in detail.

8. We have considered the submissions of Counsel for the parties and perused the records.

9. The basis of observations made by the Adjudicating Authority is the fact that the Appellant who was appearing for the Resolution Professional in the CIRP of the Corporate Debtor has also filed an Application under Section 7 on behalf of ‘Damayanti Tea Industries’, which is a unit of CCIPL. CCIPL is promoter of the Respondent No.4 (Resolution Applicant). The observations made by the Adjudicating Authority in paragraph 17.3 gives an impression that Appellant has appeared both for Resolution Professional and Resolution Applicant in the CIRP of the Corporate Debtor, which is not the fact of the matter. The Appellant was not appearing for Respondent No.4 which is a Resolution Applicant in the CIRP of the Corporate Debtor. The Appellant has filed Section 7 Application on behalf of ‘Damayanti Tea Industries’ which is a

separate company registered under the Companies Act. The copy of the Application filed under Section 7 has been brought on record at Page 158 Annexure A-4. The details as given in Part-1 indicate that 'Damayanti Tea Industries' is a unit of 'M/s. Chandrabali Commercial India Pvt. Ltd.' incorporated on 27.07.2000 with its separate identification number. Respondent No.4 who was the Resolution Applicant in the CIRP of the Corporate Debtor is 'PLBB Products Pvt. Ltd.' which is registered company having separate registration number and entity. The Section 7 Application filed by 'Damayanti Tea Industries' has no concern with the subject matter of CIRP of the Corporate Debtor. No prohibition can be read in the statutory provision governing appearance of an Advocate in representing a different company in separate proceedings filed under Section 7. The present is not a case that Appellant has appeared for Resolution Professional and Resolution Applicant i.e. Respondent No.4 in the CIRP of the Corporate Debtor.

10. Learned Counsel for the Appellant has referred to Part- VI of the 'Bar Council of India Rules, 1975' ("Rules, 1975" for short) which contains the Rules governing Advocates. Chapter II of the Rules, 1975 deals with 'Standards of Professional Conduct and Etiquette'. Rule 33 of the Rules, 1975 provides:-

“33. An advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party.”

11. Rule 14 of the Rules 1975 may be also relevant which is to the following effect:-

“14. An advocate shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client’s judgment in either engaging him or continuing the engagement.”

12. When we look into the above Rules, it is clear that Rule 33, as noticed above, prohibits an Advocate appearing for a party, not to act or appear or plead for the opposite party in a suit, appeal or other matter. The present is not a case where the Appellant can be said to have violated Rule 33. ‘Damayanti Tea Industries’ being a separate company and has initiated separate proceeding under Section 7 against different Corporate Debtor and appearance of the Appellant in that proceeding in no manner can be said to be in breach of any Rules of Etiquette or can lead to any conflict of interest in the CIRP of the Corporate Debtor. The very basis of the observations made by the Adjudicating Authority is unfounded.

13. The Hon’ble Supreme Court in “**Neeraj Garg vs. Sarita Rani- (2021) 9 SCC 92**” has made following observations in paragraphs 15 to 18:-

“15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid 5 (2005) 6 SCC 767 6 1982 SCC SL SC 20 unnecessary remarks on the conduct of the

counsel which may have no bearing on the adjudication of the dispute before the Court.

16. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before recording the adverse comments, give any opportunity to the Appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the Counsel, without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments.

17. The tenor of the remarks recorded against the appellant will not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the comments remain unexpunged in the court judgments, it will be a cross that the Appellant will have to bear, all his life. To allow him to suffer thus, would in our view be prejudicial and unjust.

18. In view of the forgoing, we are of the considered opinion that the offending remarks recorded by the learned judge against the appellant should not have been recorded in the manner it was done. The appellant whose professional conduct was questioned, was not provided any opportunity to explain his conduct or defend himself. The comments were also unnecessary for the decision of the Court. It is accordingly held that the offending remarks should be recalled to avoid any future harm to the appellant's reputation or his work as a member of the Bar. We therefore order expunction of the extracted remarks in paragraphs 4,5,6, and 7 of this judgement. The appeals are accordingly disposed of with this order."

14. We are of the view that the observations made by the Adjudicating Authority in paragraph 17.3 and other part of the judgment were not necessary for deciding the issues which had come up for consideration before the Adjudicating Authority and the observations made against the Advocate were uncalled for.

15. Learned Counsel for the Respondent has placed reliance on the judgment of the Hon'ble Supreme Court in "**V.C. Rangadurai vs. Ramdas Shrinivas Nayak & Anr- (1982) 2 SCC 463**" where the Hon'ble Supreme Court considered provisions of Sections 35, 30, 37 and 38 of the Advocates Act, 1961. Reliance has been made on paragraphs 30, 31, 38 and 40 of the said judgment. In the case before the Hon'ble Supreme Court the facts of the case have been noticed in paragraphs 17 and 18. Paragraph on which reliance has been placed by the Counsel for the Respondent where the observations of the Hon'ble Supreme Court were made on the facts of the said case. The Hon'ble Supreme Court laid down that where Counsel forms an opinion that a conflict of interest exists, his duty is to advise the client that he should engage some other lawyer. In paragraphs 30, 31 and 32, following has been laid down:-

"30. It is not in accordance with professional etiquette for one advocate to hand over his brief to another to take his place at a hearing (either for the whole or part of the hearing), and conduct the case as if the latter had himself been briefed, unless the client consents to this course being taken. Council's paramount duty is to the client; accordingly where he forms an opinion that a conflict of interest exists, his duty is to advise the

client that he should engage some other lawyer. It is unprofessional to represent conflicting interests, except by express consent given by all concerned after a full disclosure of the facts.

31. *Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. Lord Brougham, then aged eighty-six, said in a speech, in 1864, that the first great quality of an advocate was 'to reckon everything subordinate to the interests of his client'. What he said in 1864 about 'the paramountcy of the client's interest'. is equally true today. The relation between a lawyer and his client is highly fiduciary in its nature and of a very delicate, exacting, and confidential character requiring a high degree of fidelity and good faith. It is purely a personal relationship, involving the highest personal trust and confidence which cannot be delegated without consent. A lawyer when entrusted with a brief, is expected to follow the norms of professional ethics and try to protect the interests of his clients, in relation to whom he occupies a position of trust. The appellant completely betrayed the trust reposed in him by the complainants.*

32. *It is needless to stress that in a case like this the punishment has to be deterrent. There was in this case complete lack of candour on the part of the appellant, in that he in a frantic effort to save himself, threw the entire blame on his junior, K. S. Lakshmi Kumaran. The evidence on record clearly shows that it was the appellant who had been engaged by the complainants to file suits on the two promissory notes for recovery of a large sum of Rs. 20,000/- with interest due thereon. There was also complete lack of probity on the part of the appellant because it appears that he knew the debtor, Smt. Maragathammal for 7/8 years and had, indeed, been appearing for her in succession certificate proceedings. If there was any conflict of interest and duty, he should have declined to accept the brief. What is reprehensible is that he not only accepted the brief, pocketed the money meant for court fees, and never filed the suits."*

16. The above observations were fact in the facts of said case which has no application at all in the present case.

17. Reliance has also been placed on the judgment of this Tribunal in **“Vishal Ghisulal Jain RP of S.K. Wheels Pvt. Ltd. vs. Amar Universal Pvt. Ltd.- Company Appeal (AT) (Ins.) No. 176-178 of 2020”** decided on 11th October, 2022. The Appeal was filed by the Resolution Professional praying for expunction of remarks where the Appeal was partly allowed and the prayer for expunction of the observations was refused. The reasons for non-expunging the remarks were noticed in paragraph 22, which are to the following effect:-

“22. The very fact that there was no challenge by the Appellant to various observations made against him in the order dated 16.10.2019 and that he did not appear before the Adjudicating Authority on 13.11.2019 despite an order dated 11.11.2019 and was sitting outside the court room and staff of the court had requested him to appear and then appeared suddenly when adverse comments were recorded goes to speak about the personality of the Appellant against whom the observations have been made.”

18. The observations were made against the Resolution Professional in the above case and not against any Advocate appearing for the Appellant. The fact which has been noticed in the judgment speaks for itself. The above judgment does not render any help to the Respondents in the present case.

19. In view of the foregoing discussions, we are of the view that Appellant has made out a case for directing expunction of adverse remarks contained in the judgment dated 08.04.2022. Paragraphs 16 and 17 noticed the submissions of the Appellant and observations of the Adjudicating Authority are only contained in paragraph 17.3. We direct deletion of the observations made in paragraph 17.3 and clarify that the observations made in paragraph 23 are general observations and cannot be held to be directed against the Appellant.

20. In result, we allow the Appeal expunging all adverse observations made against the Appellant in the order dated 08.04.2022.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Barun Mitra]
Member (Technical)**

**NEW DELHI
4th November, 2022**

Anjali