

A JAI BALAJI INDUSTRIES LIMITED

v.

STATE BANK OF INDIA & ORS.

(Civil Appeal No.1929 of 2019)

B MARCH 08, 2019

[N. V. RAMANA AND
MOHAN M. SHANTANAGOUDAR, JJ.]

C *National Company Law Appellate Tribunal Rules, 2016 – rr. 48 and 52 – Application filed by respondent no.1 against the appellant u/s.7, IBC – Order by National Company Law Tribunal, Calcutta (NCLT) rejecting the application – Challenged by respondent no.1 – National Company Law Appellate Tribunal (NCLAT) issued notice on the question of limitation as well as on the merit of the appeal – Judgment reserved – NCLAT set aside the order of the NCLT, directing it to admit the application filed by the respondent no.1 u/s.7, IBC – Plea of appellant that it was neither served with notice of appeal before the NCLAT nor was given hearing before it – Held: While the respondent no.1 has submitted that an advanced copy of the appeal was served on the appellant, the same cannot be treated as service of notice as stipulated u/r. 48, NCLAT Rules – r.52, NCLAT Rules categorically states that the judicial section of the registry of the NCLAT shall record, in the “Notes of the Registry” column in the order sheet, the details regarding completion of service of notice on the respondents – Material placed does not indicate that the aforementioned stipulation was complied with – Thus, no notice was served upon the appellant before the NCLAT as stipulated under the rules, and the right of the appellant to be heard, audi alteram partem, was violated – Impugned order set aside – Matter remanded back to NCLAT – NCLAT to dispose of the matter as expeditiously as possible after affording opportunity of hearing to the parties – Insolvency & Bankruptcy Code, 2016 – s.7.*

G **Disposing of the appeal, the Court**

HELD: 1.1 In the rejoinder affidavit before Supreme Court the appellant has submitted that, pursuant to issuance of notice vide order dated 02.01.2019, neither did respondent no. 1 file process fee for issuance of summons in terms of the said order,

nor was the same served upon the appellant. Thus the judgment which was reserved on 08.01.2019 by the NCLAT, and consequently pronounced, was done without hearing the appellant and the observation of the NCLAT that all the parties were heard is erroneous. In fact, even the impugned order does not note the appearance of the counsels on behalf of appellant herein. While the respondent no. 1 has submitted that an advanced copy of the appeal was served on the appellant, the same cannot be treated as service of notice as stipulated under Rule 48 of the NCLAT Rules, 2016. Rule 48 of the NCLAT Rules clearly stipulates service of notice on the other side, pursuant to issuance of notice by the NCLAT in the appeal, regardless of supply of advance copy of appeal paperbook prior to the issuance of notice by NCLAT. [Paras 6-8] [697-F-H; 698-A, C-D]

1.2 Rule 52 of the NCLAT Rules categorically states that the judicial section of the registry of the NCLAT shall record, in the “*Notes of the Registry*” column in the order sheet, the details regarding completion of service of notice on the respondents. However, the material placed does not indicate that the aforementioned stipulation has been complied with. As per the rejoinder affidavit filed on behalf of the appellant, the counsel for the appellant had undertaken a search of the register of process fee and summons, and the concerned file in the office of the NCLAT on 28.02.2019. However, no record of respondent no.1 having paid the process fee for issuance and service of notice to the appellant was found.[Paras 9, 10] [698-D, F-H]

1.3 No notice was served upon the appellant before the NCLAT as stipulated under the rules, and the right of the appellant to be heard, *audi alteram partem*, has been violated. In the facts and circumstances of the case, the order of NCLAT is set aside and the matter is remanded back to the NCLAT for fresh consideration with a direction to dispose of the matter as expeditiously as possible after affording an opportunity of hearing to the parties. No opinion is expressed on the merits of the case. The NCLAT to adjudicate the matter on its own merits uninfluenced by any of the observations made. [Paras 11, 12 and 14] [698-H; 699-A-D]

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A *Ghaziabad Development Authority v. Machhla Devi*,
2018 SCC OnLine SC 2178 – referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1929
of 2019.

B From the Judgment and Order dated 08.02.2019 of the National
Company Law Appellate Tribunal, New Delhi in Company Appeal (AT)
(Insolvency) No.788 of 2018.

C Kapil Sibal, Dr. Abhishek Manu Singhvi, Mukul Rohatgi, Gaurav
Pachnanda, Sr. Advs., Rajat Sehgal, Vasanth Bhairani, Saurabh Kirpal,
Vikas Mehta, Sanjay Kapur, Ms. Megha Karnwal, Kauser Husain,
Ms. Shubhra Kapur, Rahul Gupta, Advs. for the appearing parties.

The Judgment of the Court was delivered by

D **N.V. RAMANA, J.** 1. This appeal is directed against order
dated 08.02.2019, passed by the National Company Law Appellate
Tribunal, New Delhi [“the NCLAT”], in Company Appeal (AT)
(Insolvency) No.788 of 2018, whereby the order of the National Company
Law Tribunal, Calcutta [“the NCLT”] dated 10.10.2018 was set aside
and the NCLT was directed to admit the application filed by respondent
no.1 against the appellant under Section 7, IBC.

E 2. Aggrieved by the said order, the appellant has preferred the
instant appeal.

F 3. Mr. Kapil Sibal, learned senior counsel appearing on behalf of
the appellant, assiduously urged that the appellant’s right to be heard,
audi alteram partem, one of the principles of natural justice, has been
violated in as much as the appellant has neither been served with notice
of appeal before the NCLAT nor been given a hearing before it. The
learned senior counsel further submitted that the impugned order passed
by the NCLAT is contrary to law as it failed to comply with the procedure
laid down under the NCLAT Rules, 2016 [“NCLAT Rules”], specifically
Rule 48, which clearly provides that pursuant to issuance of notice by
the NCLAT, the copy of the appeal and documents filed therewith, if
any, shall be served along with the notice on the other side. He further
submitted that though notice was directed to be issued by the NCLAT,
the same was never received by the appellant herein and the NCLAT
passed order without hearing the appellant, erroneously noting that it has
heard all the parties.

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4. On the other hand, Mr. Mukul Rohatgi, learned senior counsel appearing on behalf of respondent No.1, vehemently contested the above-mentioned submissions of appellant. He submitted that the advance copy of the appeal paperbook filed by respondent no.1 in NCLAT was duly delivered by post at the registered office of the appellant, wherein it showed intent to challenge the order of the NCLT. Despite this, the counsel for the appellant did not appear before the NCLAT. He referred to the proceedings before the Calcutta High Court to show that the appellant has been employing delay tactics to stall the insolvency proceedings, which assertion was denied by the learned senior counsel for the appellant.

5. Having heard the learned senior counsel for the parties, we have also perused the materials placed before us. We find that in the instant case, the NCLAT, vide order dated 02.01.2019, issued notice both on the question of limitation as well as on the merit of the appeal. Subsequently, judgment was reserved vide order dated 08.01.2019. On 08.02.2019, the judgment was pronounced noting:

*“17. For the reasons aforesaid, we set aside the impugned order dated 10th October, 2018 and remit the matter to the Adjudicating Authority, Kolkata Bench, Kolkata with direction to admit the application under Section 7. **Before such admission, intimation to be given to the ‘Corporate Debtor’, but no further hearing is required to be given to any person, this Appellate Tribunal having heard all the parties and having held that it is a fit case for admission.**”*

(emphasis supplied)

6. It is to be noted that in the rejoinder affidavit before us the appellant has submitted that, pursuant to issuance of notice vide order dated 02.01.2019, neither did respondent no. 1 file process fee for issuance of summons in terms of the said order, nor was the same served upon the appellant. Thus the judgment which was reserved on 08.01.2019 by the NCLAT, and consequently pronounced, was done without hearing the appellant and the observation of the NCLAT that all the parties were heard is erroneous. In fact, even the impugned order does not note the appearance of the counsels on behalf of appellant herein.

A 7. While the respondent no. 1 has submitted that an advanced copy of the appeal was served on the appellant, the same cannot be treated as service of notice as stipulated under Rule 48 of the NCLAT Rules which, *inter alia*, provides:

“48. *Issue of notice-*

B (1) *Where notice of an appeal or petition or interlocutory application is issued by the Appellate Tribunal, copies of the same, the affidavit in support thereof and if so ordered by the Appellate Tribunal the copy of other documents filed therewith, if any, shall be served along with the notice on the other side.”*

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8. Rule 48 of the NCLAT Rules clearly stipulates service of notice on the other side, pursuant to issuance of notice by the NCLAT in the appeal, regardless of supply of advance copy of appeal paperbook prior to the issuance of notice by NCLAT.

D 9. Further, Rule 52 of the NCLAT Rules categorically states that the judicial section of the registry of the NCLAT shall record, in the “*Notes of the Registry*” column in the order sheet, the details regarding completion of service of notice on the respondents. It notes:

E “52. *Entries regarding service of notice or process.- The Judicial Section of the Registry shall record in the column in the order sheet ‘Notes of the Registry’, the details regarding completion of service of notice on the respondents, such as date of issue of notice, date of service, date of return of notice, if unserved, steps taken for issuing fresh notice and date of completion of services etc.”*

F

10. However, it is pertinent to note that the material placed before us do not indicate that the aforementioned stipulation has been complied with. As per the rejoinder affidavit filed on behalf of the appellant, the counsel for the appellant had undertaken a search of the register of process fee and summons, and the concerned file in the office of the NCLAT on 28.02.2019. However, no record of respondent no. 1 having paid the process fee for issuance and service of notice to the appellant was found.

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H 11. Thus, in view of the above position, it is abundantly clear that no notice was served upon the appellant before the NCLAT as stipulated

under the rules, and the right of the appellant to be heard, *audi alteram partem*, has been violated [***See: Ghaziabad Development Authority v. Machhla Devi, 2018 SCC OnLine SC 2178***]. A

12. In the facts and circumstances of the case, we are of the considered opinion that the instant appeal can be disposed of by setting aside the order of NCLAT and remanding the matter back to the NCLAT for fresh consideration. Accordingly, we set aside the impugned order dated 08.02.2019 passed by the NCLAT and remand the matter back to NCLAT with a direction to dispose of the matter as expeditiously as possible after affording an opportunity of hearing to the parties. B

13. The appellant and the respondents are also directed to approach the NCLAT on March 13, 2019 with a prayer for early listing of the matter. It is clarified that there is no necessity for the NCLAT to issue any fresh notice to the appellant herein. C

14. Before parting with the matter, we make it clear that we have not expressed any opinion on the merits of the case. Needless to say, the NCLAT will adjudicate the matter on its own merits uninfluenced by any of the observations made hereinabove. D

15. The appeal stands disposed of in the above terms. Pending applications, if any, shall also stand disposed of. No costs.

E

Divya Pandey

Appeal disposed of.