

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins.) No. 242/2024
(IA Nos.644 & 645/2024)

IN THE MATTER OF:

**Consortium of M/s. Varma Steels Pvt. Ltd.
& AVP Varma, SRA, Mata Energy Ltd.,** ... Appellant
V
CA B Nagabhushan RP, Mata Energy Ltd.,
& 2 Ors. ... Respondents

Present:

For Appellant : Mr. P.H. Arvinth Pandian, Senior Advocate
For Mr. Avinash Krishnan Ravi, Advocate
For Respondents : Mr. P. Ramesh Babu, Advocate, For R1
Mr. Pranava Charan, Advocate, For R2

ORDER
(Hybrid Mode)

15.07.2024:

The Appellant before this Tribunal is a Successful Resolution Applicant (SRA). In the instant Company Appeal preferred under section 61 of I & B Code, 2016, he has put a challenge to the Impugned Order dated 31.05.2024 that has been passed in IA(IBC)(Liquidation) No.5/2024 in CP(IB) No.103/7/HDB/2020. The Appellant and the Respondents are represented by their respective counsels. The Learned Counsel for the Appellant has submitted that

- (i) He had filed his Counter Affidavit in the proceedings as mentioned above before NCLT, Hyderabad, by e-filing the same on 01.04.2024 and the same was accepted on record.

- (ii) It was natural for him to assume that his counter to the pleadings in the Company Petition was on record before the Learned Adjudicating Authority
- (iii) When the matter was taken up for hearing on 02.04.2024, there were two IA's which were under consideration. Orders were reserved in respect of IA (IBC) (Liquidation) No.5/2024. The other IA, that is, IA(IBC)/167/2023 got dismissed having rendered infructuous.
- (iv) Orders were delivered on IA(IBC) (Liquidation) No.5/2024 on 31.05.2024 which is the Impugned Order. To his surprise, the order did not mark his presence and did not make any mention of his pleadings.

Primarily, our concern would be to the order passed on IA(IBC)(Liquidation) No.5/2024, which is observed as under: -

“Mr Naga Bhushan, Resolution Professional present through Video Conference. Learned Counsel Mr Sathakarni K, for Successful Resolution Applicant present through Video Conference.

Learned Counsel Mr Ramesh Babu, for Resolution Professional present physically.

Matter passed over.

Matter called again. Heard. For orders on 31.05.2024”.

The argument of the Learned Counsel for the Appellant is that, when the matter was argued on 02.04.2024, the counter affidavit filed by him was already on record and in fact he had participated in the proceedings as can be confirmed by the order sheet and that orders were reserved on 31.05.2024. But ultimately

when the order was delivered on 31.05.2024, he found that it does not observe his presence and does not even take into consideration, the pleadings which have been preferred by him by way of Counter Affidavit filed before the Learned Adjudicating Authority. Accordingly, he proceeds to argue that there has been failure on part of the Learned Adjudicating Authority is not taking into consideration, the pleadings raised by the Appellant, and is not showing him as a party Respondent in the Impugned Order and the pressure of his counsel therein and this ground alone, it will render the Impugned Judgment under challenge to be perverse on account of failure to provide a reasonable effective opportunity of hearing.

The Counsel for the Financial Creditor controverts the pleadings raised by the Appellant where he submits that on the date i.e., 02.04.2024 when the arguments were heard, the counter of the Respondent was addressed upon before the Learned Adjudicating Authority, before the Judgment was reserved on 31.05.2024. He further submits that the contention raised by the Appellant may not be sustainable from the said perspective. Almost identical argument is extended by the Learned Counsel for the Resolution Professional CA B Nagabhushan, who appears and submits, that the argument that has been extended by the Appellant may not hold any grounds, because the filing of a Counter Affidavit on record will serve the purpose and it can be reasonably expected that the Learned Adjudicating Authority, while passing the Impugned Judgment has

taken into consideration the pleading which has been raised by the Appellant on record.

As far as the respective arguments of the Respondents are concerned, we differ with the contentions raised by them for the reasons as below. For the time being, if it is presumed that there might be a clerical mistake in the form of non-recording of the name of the Appellant's counsel who appeared on 02.04.2024, it could be ignored, But, looking at the contents of the Impugned Judgment in itself, particularly, the observations which has been made after Para 9 onwards, where reference has been made only with regards to the pleadings of the Resolution Professional, in the context of the provision contained under section 33(2), it appears as if the Appellant's contentions are closer to the truth. On an overall scrutiny of the Impugned Judgment in question it does not reflect that at any point of time the Learned Adjudicating Authority has dealt with the arguments and the pleading which had been extended by the Appellant on 02.04.2024 and further, no logic has been assigned by the Learned Adjudicating Authority for not accepting the version of the Appellant, contrary to the assertion of the Respondent that it was taken into consideration by the Learned Adjudicating Authority on 02.04.2024.

We are of the view that once a party to the proceedings is contesting the proceedings and his right is to be prejudiced by any orders which is to be passed, he has to be effectively heard and not only he be heard on whatsoever the arguments have been extended, but also the judicious propriety demands that the

same has to be considered by the Learned Adjudicating Authority and the acceptance or rejection of such arguments are to be accompanied by logical reasons assigned to it. Non-assignment of any reasons or failing to even make references to the pleadings raised by the Appellant itself renders the Impugned Judgment under challenge to be perverse. Hence the same cannot be sustained.

When the Respondents were called to answer the question as to at what stage of the Impugned Judgment the contentions/submissions of the Appellant was considered by the Learned Adjudicating Authority, no plausible answer had been forthcoming from them nor have they been able to point out any stage of, the Impugned Judgment of 31.05.2024, the arguments of the Appellant was at all considered.

In these eventualities, instead of venturing into the merits of the matter any further, exclusively on the ground that the Judgment is perverse because of the non-consideration of the pleadings, and non-reference of the name of the Appellant and considering the argument dated 02.04.2024, the Impugned Judgment would be perverse and non-sustainable in the eyes of law and the same is accordingly hereby quashed, and the matter is remitted back to the Learned Adjudicating Authority i.e., National Company Law Tribunal, Hyderabad Bench – I, to decide the matter as a fresh case after considering the respective contentions including the contention raised by the Appellant by way of counter affidavit that was filed on 01.04.2024. It has been prayed that some time limit may be framed for the Learned Adjudicating Authority to decide the matter

afresh. In deference to the aforesaid request made by the Parties, the Learned Adjudicating Authority is requested to decide the IA(IBC)(Liquidation) No. 5/2024 in CP(IB) No.103/7/HDB/2020, as expeditiously as possible and no later than one month from the date of production of the Certified Copy of this Judgment.

The Learned Adjudicating Authority may not construe that any observations which have been made by this Appellate Tribunal in the aforesaid Judgment had at all dealt with the matter on merits. The Respective IA(IBC)(Liquidation) No. 5/2024 is to be decided exclusively on its own merits and in accordance with law.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/TM