

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Ins.) No. 1492 of 2022**

**IN THE MATTER OF:**

**Ami Ashutosh Majumdar**

**....Appellant**

**Vs.**

**Omkara Assets Reconstruction Pvt. Ltd. & Anr.**

**....Respondents**

**Present:**

**For Appellant: Mr. Krishnendu Datta, Sr. Advocate, Mr. Himanshu Satija, Ms. Prerana Wagh, Mr. Shivam Shukla, Advocates.**

**For Respondents: Mr. P. Nagesh, Sr. Advocate, Mr. Adarsh Ramanujan, Mr. Lzafeer Ahmad BF, Mr. Skanda Shekhar, Mr. Akshay Sharma, Advocates for R-1.**

**O R D E R**

**01.09.2023:** Heard Learned Counsel for the appellant as well as Learned Counsel appearing for the Respondent. This appeal has been filed against the order dated 06.12.2022 passed by Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-III) by which order Adjudicating Authority has proceeded on Section 7 application ex-parte to the respondent and admitted Section 7 application. In Section 7 application which was filed by the Financial Creditor an order was passed by Adjudicating Authority on 28.09.2022 which is to the following effect:

*“Counsel appearing for the Petitioner is directed to issue notice to the Respondent intimating the Respondent regarding filing of the above Company Petition against them with further direction to the Respondent to file reply within two weeks from the date of receiving notice if petition copy is served and to appear either in person or*

*Cont'd.../*

*through advocate before this Bench on the next date of hearing. The Petitioner shall file service affidavit along with copy of notice sent to the Respondent, original postal receipt, track report, email etc. at least two days before the next date of hearing.*

*The Registry is also directed to issue notice to the Respondent and shall submit service report along with postal receipt, track report/ acknowledgment.*

*Hard copy of the above Company Petition is not available with this bench. Petitioner, Registry and the court officer of this bench shall ensure the availability of hard copy before the next date of hearing. List this matter on 15.11.2022 for appearance of the Respondent.”*

2. In pursuance of the order dated 28.09.2022 Financial Creditor sent a letter dated 01.10.2022 to the appellant informing that 15.11.2022 is the date of appearance. In pursuance of the later part of the order registry has also sent a communication dt. 31.10.2022 which was received on 04.11.2022 along with letter dated 31.10.2022 sent by registry, copy of the order dated 28.09.2022 was also sent. The Adjudicating Authority by order dated 28.09.2022 allowed two weeks time to file Reply after receipt of the notice.

3. On 15.11.2022 no one appeared on behalf of the Corporate Debtor, hence, the Adjudicating Authority heard the matter, proceeded ex-parte against the Corporate Debtor and reserved the order. Thereafter, the order has been delivered admitting Section 7 application on 06.12.2022.

4. Learned for the appellant challenging the order contends that in the letter which was sent by the Financial Creditor there was no mention of filing

the reply within two weeks and the letter which was received from registry on 04.11.2022 two weeks time to file the reply was given although date of appearance was 15.11.2022. It is submitted that as per the said notice time for reply has not expired on 15.11.2022, hence, Adjudicating Authority ought to have given one opportunity to file reply.

5. Mr. P. Nagesh, Learned Senior Counsel appearing for the respondent refuting the submission of learned counsel for the appellant contends that appellant/Financial Creditor were informed of the date by letter dated 01.10.2022 and they have also received notice from the registry intimating them that 15.11.2022 is the date of appearance and they did not appear. Adjudicating Authority has rightly proceeded ex-parte and heard the matter.

6. This appeal was heard by this Tribunal on 12.12.2022 on which date we have passed following order:

*“12.12.2022: Learned counsel for the Appellant submits that the Adjudicating Authority has proceeded ex-parte on 15.11.2022 and reserved the orders and on 06.12.2022, the Section 7 application has been admitted.*

*It is submitted that the Appellant could not appear or file reply.*

*It is further submitted that interim moratorium was declared under Section 95 application on 14.10.2022 and thereafter application under Section 7 ought not to have been admitted.*

*Issue notice. Learned counsel for Respondent No.1 appears and accepts notice. Let a copy of the Appeal Paper Book be provided to Respondent No.1. Issue notice to Respondent No.2 only.*

*Requisites alongwith process fee be filed within three days.*

*Respondent may file Reply within two weeks. Rejoinder be filed within two weeks' thereafter.*

*List this Appeal on 23.01.2023.*

*In the meantime, no further steps shall be taken in pursuance of the order dated 06.12.2022.”*

7. We have considered the submissions of the counsel for the parties and perused the records.

8. 15.11.2022 was the first date after issuance of notice by the Adjudicating Authority on 28.09.2022. Although the appellant was well aware that they have to appear on 15.11.2022 since notice by the registry was already been received by them but the submission of the counsel for the appellant that opportunity of two weeks was granted after service of notice as per order of the Adjudicating Authority, hence, when notice was received from the registry then they had still two weeks time to file the reply and on 15.11.2022 time had not expired. On 15.11.2022 when the appellant did not appear, the Adjudicating Authority on the same very date proceeded ex-parte and reserved the order.

9. In view of the fact that notice by registry was received and served on 04.11.2022 which fact is not disputed, Adjudicating Authority ought to have given one more opportunity to file a reply. Proceeding ex-parte and reserving order is not giving sufficient opportunity to the appellant as contemplated by Rule 37 Sub Rule 2 of the NCLT Rule, 2016. We having already by our order dated 12.12.2022 stayed further steps in pursuance of the order. Ends of justice be served in giving one opportunity to the appellant to file a reply before

the Adjudicating Authority. Let the appellant filed reply within two weeks from today and appear on the next date fixed by Adjudicating Authority. We fix 25.09.2023 for parties to appear before the Adjudicating Authority. The Rejoinder by the Financial Creditor will be filed before the date fixed. Adjudicating Authority may fix the date for hearing. Adjudicating Authority shall proceed to dispose of the matter as early as possible.

10. The order dated 06.12.2022 is set aside. The appeal is disposed of accordingly.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

*sa/nn*