

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

Company Appeal (AT) (Insolvency) No. 97 of 2024

In the matter of:

Marshall Machines Ltd.

....Appellant

Vs.

DN Solutions Co. Ltd.

...Respondent

For Appellant

Ms. Vriti Gujral, Advocate.

For Respondent

**Mr. Kaustubh Prakash, Ms. Hita Sharma,
Advocates.**

ORDER

(Hybrid Mode)

16.01.2024: Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent.

2. This Appeal has been filed against the order dated 21.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench Court No.1, by which order the Adjudicating Authority has refused to give another opportunity to the Appellant to file a reply and the right to reply has struck off.

3. Learned Counsel for the Appellant submits that there has been talks of settlement, on 16.11.2023 in effect settlement was communicated but it could not be finalized, hence, the time was taken to bring on record the settlement. Thereafter, no reply was given by the Corporate Debtor and the Adjudicating Authority again allowed time on 22.11.2023 to the Appellant directing for payment of cost of Rs.25,000/- within one week and granted three weeks' time

to bring settlement on record, failing which right to file reply will be struck off and case was directed to be listed on 21.12.2023. The case came up on 21.12.2023 but no settlement was filed, hence, the Adjudicating Authority proceeded to struck off the right of the Appellant to file reply. Learned Counsel for the Appellant submits that the Appellant's conduct was bonafide and Appellant be allowed one more opportunity to file Reply. There has been no reply regarding settlement although communication was received on 16.11.2023.

4. Learned Counsel for the Respondent submitted that there are several orders passed by the Adjudicating Authority granting time to the Corporate Debtor to file a reply. Learned Counsel for the Respondent has referred to orders passed by the Adjudicating Authority dated 20.03.2023, 16.05.2023, 27.07.2023 and 11.10.2023. He submits that sufficient opportunity has been granted to the Appellant to file a reply but no reply has been filed, hence, the Adjudicating Authority has not committed any error in striking off right to file a reply.

5. Copy of the orders passed by the Adjudicating Authority have been placed by the Counsel for the Respondent. Orders dated 20.03.2023, 16.05.2023 and 27.07.2023, following orders were passed by the Adjudicating Authority:-

“20th March, 2023

Additional affidavit in compliance of order dated 21.01.2023 has been filed vide Diary No. 2820/01 dated 21.02.2023. The same is taken on record. As a matter of indulgence,

respondent/ corporate debtor is directed to file reply within three weeks with a copy in advance to the counsel opposite. Rejoinder thereto, if any, be filed within two weeks thereafter with a copy in advance to the counsel opposite. In the meantime, learned counsel for the petitioner/financial creditor to inform the next date of hearing to the learned counsel for the petitioner through email and place the said email along with an affidavit on record within two weeks. List the matter on 16.05.2023.

16th May, 2023

As per the direction passed by this Bench on 20.03.2023, compliance affidavit has been filed by the learned counsel for the petitioner-Operational Creditor vide diary No.02820/2 dated 30.03.2023. The same is taken on record. A date is requested by the learned counsel for the respondent-Corporate Debtor for filing the reply. Let the same be filed within two weeks with a copy in advance to the counsel opposite. Rejoinder thereto, if any, be filed two week thereafter with a copy in advance to the counsel opposite. Last opportunity is granted. List the matter on 27.07.2023.

27th July, 2023

It is stated by learned counsel for respondent-corporate debtor that settlement talks are going between the parties, but no reply has been filed despite last opportunity. In these circumstances, cost of Rs. 5,000/- is imposed upon the respondent for not filing the reply to be deposited with NCLT Bar Association, Chandigarh. It is made clear that if the matter is not settled within 45 days then, reply be filed by the respondent-corporate debtor, failing which their right to

file reply will be struck off. The reply be filed within next two weeks, with a copy in advance to the counsel opposite along with payment of costs. Rejoinder thereto, be filed within next two weeks with a copy in advance to the counsel opposite. List on 11.10.2023.”

6. The above orders indicate that repeatedly time was granted to the Corporate Debtor to file reply which was not filed and an application for extension being IA No.2356 of 2023 was also filed by the Appellant but on the statement that settlement has entered, the Adjudicating Authority did not pass any order and it was declared as infructuous. However, the Adjudicating Authority on 22.11.2023 passed following order:-

“CP (IB) No. 13/Chd/Pb/2023

IA No. 2356/23 was filed for seeking an extension of time for filing the reply, and on the last date of hearing, it was stated by learned counsel for the respondent-corporate debtor that the matter has been settled between the parties and only formal execution of settlement agreement is required. In these circumstances, IA No. 2356/23 was rendered infructuous and disposed of on last date of hearing, since the reply has not been filed and no agreement has been placed before the Bench, therefore, learned counsel for Respondent-Corporate debtor is directed to pay the cost of Rs. 25,000/- to petitioner-operational creditor within one week. Learned counsel for the respondent-corporate debtor is further directed to place on record the settlement agreement, if any within

three weeks, failing which right to file the reply will be struck off. List on 21.12.2023.”

7. Learned Counsel for the Appellant has also referred to e-mail subsequent to the order dated 22.11.2023. She submits that it has not been replied by the Operational Creditor.

8. We need not enter into emails sent by the parties since the Adjudicating Authority has given sufficient opportunity to the Appellant to file a reply which has not yet been filed, we see no error in the order impugned refusing to give another opportunity to Appellant to file a reply. However, it shall be open for the Appellant to make submissions before the Adjudicating Authority and with the leave of the Adjudicating Authority may also file written submissions.

9. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

Anjali/nn