

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI BENCH****Company Appeal (AT) (CH) (Ins) No. 20 of 2023****IN THE MATTER OF:****K. Gaurav Kumar & Alpa Jain****...Appellants****Versus****Ram Charan Company Pvt. Ltd. & 2 Ors.****...Respondents****Present:****For Appellant : Mr. Gaurav Kumar & Alpa Jain in person****For Respondent : None****O R D E R****PER: JUSTICE RAKESH KUMAR JAIN:**

**26.07.2023.** Appellants are the practising Company Secretaries at Chennai. They are aggrieved against the observations made against them by the Adjudicating Authority (National Company Law Tribunal, Division Bench - II, Chennai) in Para 9.4 of the impugned order dated 13.12.2022.

2. In brief, Rubamin Pvt. Ltd. (Operational Creditor) filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rules') against Ram Charan Company Pvt. Ltd. (Corporate Debtor) for the resolution of principal amount of Rs. 98,38,558/- before the Adjudicating Authority. In this application, the present Appellants represented the Corporate Debtor (Ram Charan Company Pvt. Ltd.). The Application bearing CP (IB)/30/CHE/2021 was admitted by the Adjudicating Authority but in Para 9.4 of the impugned order, it has been found that both the Appellants had appeared for M/s Classic Exports in CP (IB)/157/CHE/2021 filed against Ram Charan Company Pvt. Ltd. (the same Corporate Debtor) whom the

Appellants have represented in the present application, therefore, the Adjudicating Authority made the observations against their act and conduct.

3. The Appellants have submitted that since the Adjudicating Authority, before recording the adverse remarks against the Appellants in Para 9.4 of the impugned order, did not take them into confidence by issuing them notice to the effect as to why their act and conduct as Company Secretaries need not be denounced but also it did not take into consideration the record of the case of M/s Classic Exports i.e. CP (IB)/157/CHE/2021. It is submitted that had this exercise been done by the Adjudicating Authority, the observations against them in Para 9.4 of the impugned order would not have been made.

4. In order to explain the facts of the case of M/s Classic Exports and the present case, the Appellants have prepared a chart which is reproduced as under:-

Sl.No	Particulars	Case Details	Date when the case came to a closure
1.	Classic exports represented by K.Gaurav Kumar and Alpa Jain at NCLT, Chennai	CP(IB)/157/(CHE)/2021 Before NCLT Chennai	Order Pronounced on: 21.4.2022

2.	CIRP Closure and amicable settlement between the parties and closure of the CP	IA/553/CHE/2022 in CP (IB)/157(CHE)/2021	21.6.2022
3.	Withdrawal of Appeal at Hon'ble NCLAT	Company Appeal (AT)(CH)(Ins) No.140/2022	15.07.2022
3.	Ramcharan company approached the appellants post the settlement.		
4.	Date of first appearance before NCLT, Chennai in the present case		26.08.2022

5. It is submitted that the case of M/s Classic Exports was settled between the parties by way of a compromise on 21.06.2022 and even the Appeal filed by the said Company was withdrawn on 15.07.2022. It is submitted that neither M/s Classic Exports is in any way related to Corporate Debtor in the present case nor the Appellants were engaged on behalf of Ram Charan Company Pvt. Ltd.

(Corporate Debtor) during the pendency of the proceedings initiated in the case of M/s Classic Exports in which they were representing the Financial Creditors.

6. It is further submitted that before appearing on behalf of the Corporate Debtor both the Appellants had even obtained no objection certificate (NOC) from the previous counsel. It is, therefore, submitted that the Adjudicating Authority has recorded the adverse remarks against the Appellants in Para 9.4 of the impugned order is a unholy haste because it neither issued notice to the Appellants before making the said observations nor even looked into the record of the case of M/s Classic Exports and thus the adverse remarks have been recorded behind their back which is against the basic principle of natural justice i.e. Audi Alterum Partum.

7. In support of their submissions, they have relied upon a decision of the Madras High Court in the case of A.J. Moahmmmed Iqbal Vs. Bar Council of India & Ors. in Writ Petition No. 29284 of 2014 decided on 17.11.2014 in which it has been held that *“.....Therefore, if an Advocate takes up the cause of a client in one particular matter and takes up the cause of a public institution like the Wakf Board against the former client, long after he ceased to be a lawyer for the former client, his former client should not be allowed either to win over him or to chuck him out of the litigation by threatening to proceed before the Bar Council”*. They have also relied upon a decision of the Hon’ble Supreme Court in the case of Abani Kanta Ray Vs. State of Orissa & Ors. decided on 13.10.1995 in which it has been held that *“use of intemperate language or making disparaging remarks against anyone, unless that be the requirement for deciding the case, is inconsistent with judicial behaviours. Written words in judicial orders are for*

*permanent record which make it even more necessary to practice self restraint in exercise of judicial power while making written orders”*. They have further submitted that the Financial Creditors, namely, M/s Classic Exports, whom the Appellants had represented before the Adjudicating Authority in their case against the same Corporate Debtor did not make any complaint against the Appellants before any forum much less the Adjudicating Authority. The NCLAT in the case of Vandana Garg, RP of Jyoti Structures Ltd. Vs. State Bank of India in CA (AT) (Ins) No. 507 of 2018 decided on 26.10.2018 has also held that if any such kind of observation is to be made then an opportunity of hearing should be granted.

8. No one appears on behalf of the Respondent because they were proceeded against ex-parte earlier.

9. Keeping in view the aforesaid facts and circumstances and that the Appellants are not found at any fault, the Adjudicating Authority has committed a patent error while recording the adverse remarks against both the Appellants without notice to them, without application of mind and against the settled principles of law. Consequently, the appeal succeeds and as a result thereof observations made in Para 9.4 of the impugned order against the Appellants are hereby expunged.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

*Sheetal*