

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 332 of 2022

IN THE MATTER OF:

Manish Kumar
Shareholder of Hind Syntex Ltd.

....Appellant

Vs.

Dena Bank & Anr.

....Respondents

Present:

For Appellant: Mr. Mayank Bughani, Ms. Aastha Mehta, Ms. Prerana Mohapatra, Advocates.

**For Respondents: Mr. Nitin Pal & Mr. Shivam Pandey, Advocates for R-1.
Mr. Krishan Kumar, AOR.**

O R D E R

14.09.2023: Heard Learned Counsel for the parties. This appeal has been filed against the order dated 04.03.2022 passed by the Adjudicating Authority by which order Adjudicating Authority has admitted Section 7 application filed by the Bank of Baroda (the Respondent herein). When the appeal was heard on 31.03.2022 this 'Tribunal' has passed following order:

"31.03.2022: Shri Abhijeet Sinha, learned counsel for the Appellant submits that order admitting the Application passed by the Adjudicating Authority is ex-parte. It is submitted that the Application filed by the Financial Creditor itself was dismissed in default and then restored on 29.10.2021 only by which order notices were issued to the Corporate Debtor. On the next date, i.e. on 26.11.2021 order was passed to proceed ex-parte holding that the notice has been served, whereas neither notice was served nor any affidavit has been mentioned on the record indicating that notice has been served.

Issue notice. Requisites alongwith process fee be filed within three days. Let a Reply be filed within two weeks. Rejoinder be filed within two weeks thereof.

List this Appeal on 06.05.2022.

In the meantime, no further proceedings shall take place in pursuance to order dated 04.03.2022 passed by the Adjudicating Authority.

Looking to the nature of the issues, the Appeal itself be disposed of on the next date."

Cont'd.../

2. In pursuance to the notice issued by this Tribunal Reply has been filed by the Bank to which Rejoinder has also been filed.

3. The Learned Counsel for the Appellant submits that in the Section 7 application the Appellant were never heard nor notices could be served on them. Learned Counsel for the Appellant submits that initial notices were sent to the appellant which were returned unserved since Company was closed. Then on 29.10.2021, the Adjudicating Authority has passed a fresh order for issuing notice to the Appellant. It is submitted that in pursuance of the order of the Tribunal dt. 29.10.2021 an affidavit was filed by the Bank stating that notices have been served through speed post. Copy of the documents indicates that only name of the Corporate Debtor and the pin-code was mentioned and there was no address shown on which notices were sent which were returned refused. It is submitted that on the same address when earlier notices were not served as held by the Adjudicating Authority, service could not have been accepted. It is further submitted that Adjudicating Authority directed to proceed ex-parte against the appellant on 26.11.2021 and thereafter order was reserved on 25.02.2022.

4. Learned Counsel for the Respondent opposing the submissions submits that notices were duly served and an affidavit of service was also filed which has been relied by the Adjudicating Authority. It is submitted that appellant did not deliberately appear and avoided to appear to gain time.

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

6. From the facts which has been brought on the record it is clear that the application filed under Section 7 by the Bank was dismissed for non-prosecution on 16.01.2020, which could be restored only on 29.10.2021, thereafter fresh notices were directed to be issued. Initially when notices were issued under Section 7, affidavit of service was filed and it was noted in the affidavit that the Company is closed and item returned back to the addressee. It is not shown that subsequently on which address notices were issued in pursuance of the order passed by the Tribunal dated 29.10.2021 when notices on the same address were returned unserved. Service ought not to have been accepted, when no address or no further fact were brought on the record before the Adjudicating Authority.

7. We are of the view that in facts of the present case one opportunity to be given to the appellant to file a reply before the Adjudicating Authority. Let Reply be filed within two weeks from today. Rejoinder be also filed by the Bank within two weeks thereafter. After four weeks parties may request the Adjudicating Authority to fix a date for hearing the Section 7 application. The order impugned dated 04.03.2022 is set aside. The application under Section 7 filed by the Bank is revived before the Adjudicating Authority to be heard and decided in accordance with law. The appeal is disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

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