

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 851 of 2024

IN THE MATTER OF:

**Ashok Mittal,
Liquidator of Reli Tech Services Ltd.**

...Appellant

Versus

Rakesh Gupta & Ors.

...Respondents

Present:

For Appellant : Mr. Rohan Agarwal, Ms. Rubina Khan and Mr. Muhammed Varawala, Advocates.

For Respondents : Sarosh Bharucha, Mr. Hafeezur Rahman and Mr. Rakesh Sharma, Advocates for R-1 To R-4 & R-7.

O R D E R
(Hybrid Mode)

12.08.2024: Heard Counsel for the Parties.

2. This Appeal has been filed against an Order dated 20.02.2024, by which Order Adjudicating Authority has rejected the Application I.A. 1121/2021 filed by the Resolution Professional. Order dated 20.02.2024 reads as follows:

“1. Abha Patel i/b Fortis India Law, Ld. Counsel for Applicant present (VC). Adv. Main Chaudhary i/b Adv. Hafeezur Rahman, Ld. Counsel for the Respondents present (VC):

2. This IA is filed in 2021. Counsel from both sides are not ready/willing to argue the case.

3. IA is dismissed for non-prosecution.”

3. The Appeal was heard by this Tribunal on 10.07.2024, on which date following Order was passed:

“1. Counsel for the appellant submits that on 20.02.2024, when the matter was taken before the Adjudicating Authority, both the counsel has made request for adjournment. Counsel for the appellant has made a request for adjournment. Due to the fact that Ms. Rubina Khan, Advocate was indisposed due to the ill health of her infant daughter, Adjudicating Authority dismissed the IA for non-prosecution.

2. Counsel appearing for Respondent Nos.1 to 4 and 7 seeks time to file reply affidavit. Let reply be filed within two weeks.

3. List the appeal on 01.08.2024. Rejoinder be filed before the date fixed.”

4. The Reply has been filed by the Respondent in pursuance of our Order, where, in Paragraph 9 of the Reply following has been stated:

“9. It is submitted that, the answering Respondents, cannot be held to be non-serious in prosecuting the said Interim Application No. 1121 of 2021 and it was incumbent upon on the Appellant to prosecute the said Application, and the answering respondents, have not asked for time, but only a submission was made that the counsel appearing for the answering Respondents, was on his legs and therefore no request for any adjournment was made on their behalf.”

5. Learned Counsel for the Appellant submits that request was made before the Adjudicating Authority on the date for adjournment. Counsel for the Appellant has made that Ms. Rubina Khan Advocate was indisposed due to ill health of her infant daughter. It is submitted that in fact, Counsel for the Respondent also submitted that Counsel is not present but no adjournment was sought for on behalf of the Respondent.

6. The Adjudicating Authority has recorded in the Order that both sides are not ready and willing to argue the case whereas from the facts which have been brought in the Reply it is clear that request for adjournment was made for a reason.

7. Present was not a case that Counsel stated that they are not ready or willing to argue the case rather they prayed for adjournment due to reason that Ms. Rubina Khan was indisposed due to the ill health of her infant daughter, which fact is also recorded in our Order dated 10.07.2024.

We are of the view that sufficient cause has been made out to set aside the Order dated 20.02.2024. The Appeal is allowed, Order dated 20.02.2024 is set aside. I.A. No. 1121/2021 is revived before the Adjudicating Authority to be heard and decided in accordance with law.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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