

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

**Company Appeal (AT) (Ins.) No. 584 of 2023**

**IN THE MATTER OF:**

**Surender Modi** **...Appellant**  
**Director with Powers Suspended of J.R. Modi Associates**  
**Ltd.**

**Versus**

**Kaliber Associates Pvt. Ltd.** **...Respondents**  
**Through its Liquidator Mr. Mohan Lal Jain and Anr.**

**Present:**

**For Appellant: Mr. Abhijeet Sinha, Mr. Apoorv Agarwal,**  
**Ms. Vaishnavi Prakash, Advocates**

**For Respondents: Mr. Vinod Chaurasia, Advocate for R-2.**  
**Mr. Anirban Bhattacharya, Mr. Rajeev Chowdhary,**  
**Advocates for R-1.**

**O R D E R**

**05.10.2023:** Heard Learned Counsel for the parties. This appeal has been filed against the order dated 21.04.2023 by which order Adjudicating Authority admitted the application filed under Section 7 by the respondent (herein). The Adjudicating Authority in paragraph 8 of the order has made following observations:

*“8. This Adjudicating Authority in compliance of the Hon'ble NCLAT's direction in order dated 27.05.2022 had fixed the matter for arguments on 23.08.2022 in its order dated 05.07.2022. This Adjudicating Authority considering that no one has appeared on 23.08.2022 on behalf of the Corporate Debtor and also the fact that reply of the Corporate Debtor is still not brought on e- portal of this Adjudicating Authority had no other option but to proceed against the Corporate Debtor ex-parte vide order dated 20.09.2022.”*

2. It is submitted that NCLT by its judgment and order dated 27.05.2022 has set aside the earlier admission order dated 31.03.2022 and by allowing the appeal following observations were made:

*“However, the fact of the matter is that the said order dated 03.08.2021 was duly complied with by the Appellant by filing their reply in the Registry of the Tribunal and paying the cost, determined by the Tribunal, to the Respondent, which was admittedly received. It is apparent from the order dated 23.09.2021 that the receipt of the cost has not been brought to the notice of Tribunal otherwise, the Tribunal would have presumed that if the cost is paid then the Reply must have been filed.*

*In these circumstances, we are of the view that the order dated 23.09.2021 is not in accordance with the factual position available on record and therefore, the same deserves to be set aside. Once the order dated 23.09.2021 is set aside by which the Appellant was proceeded against ex- parte, the order dated 21.02.2022 also deserves to be set aside.*

*In view of the aforesaid discussions, CA (AT) (Ins) No. 523 of 2022 is allowed and order dated 21.02.2022 is set aside and consequently, the order dated 23.09.2021, whereby the Appellant was proceeded against ex-parte is also set aside. In the order dated 31.03.2022, challenged in CA (AT) (Ins) No. 443 of 2022, the Adjudicating Authority has recorded in Para 6 of the impugned order that "the Corporate Debtor has not filed any Reply nor appeared and hence the Corporate Debtor was proceeded against ex-parte vide order dated 23.09.2021". Keeping in view that CA (AT) (Ins) No. 523 of 2022 is allowed, the impugned order dated 31.03.2022 is*

*also set aside and the matter is remanded back to the Adjudicating Authority, NCLT, New Delhi to decide CP(IB) No. 1122/ND/2020 afresh taking into consideration the Reply filed by the Appellant on 12.08.2021 and decide the matter as expeditiously as possible. The parties are directed to appear before the Tribunal on 05th July, 2022.”*

3. After the remand by this Tribunal NCLT in paragraph 8 has observed that reply of the Corporate Debtor is still not brought on e-portal of this Adjudicating Authority had no other option but to proceed against the Corporate Debtor ex-parte vide order dated 20.09.2022

4. Learned Counsel for the appellant submitted that this Tribunal itself has noticed that reply was filed and cost was paid and even if the reply was not on the e-portal an opportunity ought to have been given to the appellant to put it on the e-portal.

5. Learned Counsel for the respondent submitted that even the date when order was passed the reply was not on the e-portal, hence, the Adjudicating authority has rightly decided to proceed ex-parte and admit the application.

6. After having heard learned counsel for the parties, we are of the view that the reply having been filed which was noticed by this Appellate Tribunal in order dated 27.05.2022, the Adjudicating Authority ought to have looked into the reply and even it was not on the e-portal opportunity ought to have been given to bring it on e-portal or physical copy of the reply ought to have been taken from the Corporate debtor.

7. We, thus, are of the view that the Adjudicating Authority committed error in proceeding ex-parte ignoring the reply and admitting section 7 application. In result, we set aside the impugned order, revive the Section 7 application again before the Adjudicating Authority.

8. Learned Counsel for the appellant submits that in event the reply is not on the e-portal the same shall be brought on the e-portal within two weeks from today after curing the defects, if any.

9. Adjudicating Authority shall fix a date after two weeks and after hearing the parties pass afresh order in accordance with law.

10. By the impugned order IRP was appointed. IRP stand discharged.

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

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

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

*sa/nn*