

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1634 of 2023 &
I.A. No. 5898 of 2023

IN THE MATTER OF:

Krishna Hi-Tech Infrastructure Pvt. Ltd.

...Appellant

Versus

Kshitiz Chhawchharia & Ors.

...Respondents

Present:

For Appellant: Mr. A.K. Shrivastava, Mr. Akash Sharma, Advocates.

**For Respondents: Mr. Deep Roy, Mr. Rony O. John, Mr. Piyush Swami,
Mr. Shwetank Nigam, Advocates for R-1.**

**Mr. Abhirup Dasgupta, Ms. Jayashree Shukla
Dasgupta, Advocates for R-2.**

ORDER
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain (Oral)

07.08.2024: This appeal is directed against the order dated 10.11.2023 passed by National Company Law Tribunal, Kolkata Bench by which I.A No. 773 (KB) 2021 filed in CP (IB) No. 148/KB/2018 by the appellant namely Krishna Hi-Tech Infrastructure Pvt. Ltd. (Operational Creditor) has been disposed of but the prayer in Clause 5 (a) of the application has not been decided. The said prayer made is as under:

“5 a. Direction to the Ld. Resolution Professional to pay the lease rent from 14.03.2019 till date for the materials supplied by the Applicant at the project site of M/s. Tantia Constructions Limited, as per the rental order dated 25.11.2016 and also release the materials immediately or in the alternative pay the market value of the materials.”

2. The sum and substance of the argument of the appellant is that there were two prayers made, first in regard to the dues of the pre CIRP to be paid by the SRA and the dues of the post CIRP which are still accumulating and continuing in the shape of rental of the material supplied and that the material has also not been released, has not been decided by the Tribunal.

3. We have perused prayer 5 (a) of the application and have also perused the findings recorded by the Tribunal in Paragraph 9 of the impugned order, which read as under:

“9. In absence of any justification on the part of the RP to hold back the amount that has accrued in terms of the rent that was directed to be paid and having noted that the materials of the applicant have been used at Metro Railway site without paying rent to the applicant, as also the order passed by the Tribunal in IA No. 497 of 2020 to include Metro in the list of operational creditors with further direction to the payments, we dispose of the IA with a direction upon the SRA to see that the directions already given by the Tribunal on 15.07.2021 are complied with, within a period of four weeks and to report to this Tribunal.”

4. On the aforesaid facts and circumstances, we are one with the appellant that the prayer made in the application Clause 5 (a), appears to have escaped the notice of the Tribunal, therefore, no finding has been recorded on the same.

5. In such circumstances, it would be just and expedient if the impugned order dated 10.11.2023 is maintained and the Tribunal is directed to decide the prayer 5 (a) of the application after hearing all the parties and by passing a speaking order.

6. The parties are directed to appear before the Tribunal on 30.08.2024.

7. It is made clear that while passing this order we have not entered upon the merits of the case which is left open for the Tribunal to decide after taking into consideration the pleadings as well as evidence on recorded by all the parties concerned and thereafter the Tribunal shall pass a speaking order in accordance with law.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

sa/rr