

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1389 of 2024
& I.A. No. 4655, 5055 of 2024

IN THE MATTER OF:

Prashant Chandra Rath & Anr.

...Appellants

Versus

Surya Kanta Satapathy & Anr.

...Respondents

Present:

**For Appellants : Mr. Sumesh Dhawan, Mr. Saswat Kumar Acharya,
Mr. Dhananjay Bhaskar Ray, Advocates.**

For Respondents : Mr. Balram Pandit, Advocate.

O R D E R
(Hybrid Mode)

13.11.2024: Heard Mr. Sumesh Dhawan, learned counsel for the Appellant. This appeal has been filed against order dated 23.01.2024 passed by the NCLT, Cuttack Bench, Cuttack in IA No.262/CB/2023 by which IA the Appellant has prayed to declare the order passed in IA No.276/CB/2020 as nullity in law, non-est and void ab initio.

2. The Appellant is the Suspended Director of the Corporate Debtor. IA No.276/CB/2020 was filed by the Resolution Professional for avoidance of certain transactions on which application order was passed by the Adjudicating Authority allowing the application filed by the Resolution Professional and directing for refund of the amount, against which order appeals were filed in this Tribunal being Company Appeal (AT) (Ins.) No. 850 of 2022 and 869 of 2022. Both the appeals came to be dismissed on 30.09.2022. Aggrieved by the said order of this Tribunal, Civil Appeal Diary

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No.36679/2022 was filed, which was dismissed as withdrawn by the Hon'ble Supreme Court on 18.04.2023. After the aforesaid order of the Hon'ble Supreme Court, an IA 262/CB/2023 was filed giving rise to the present appeal. It is submitted that after IA was reserved, the Appellant filed an application before the Hon'ble Supreme Court for clarification, which was also disposed of on 05.04.2024. Learned counsel for the Appellant submitted that the Adjudicating Authority by the impugned order has rejected the IA No.262/CB/2023, aggrieved by which order this appeal has been filed.

3. Learned counsel for the Appellant challenging the order submitted that the issue that the Resolution Professional has not formed requisite opinion for filing the application has not gone into and considered, which is very foundation for declaring the order passed in IA No.276/CB/2020 as nullity in law, non-est and void ab initio.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. IA No.276/CB/2020 was filed by the Resolution Professional for avoidance of transactions which was heard by the Adjudicating Authority and by order dated 26.04.2022 the application was allowed. Certain directions including direction to refund the amount to the Corporate Debtor were issued. Against the said order Company Appeal (AT) (Ins.) No. 850 of 2022 was filed, which has been dismissed by this Tribunal on 30.09.2022. In Para 30 of the order of this Tribunal following was held:

“30. In view of the above discussions, facts and circumstances, we therefore affirm the findings of the Adjudicating Authority and are of the considered opinion that there are no convincing reasons to interfere with the impugned orders in IA Nos. 276/2020 and 337/2020. We are, thus, unable to accept the contention of the Appellants. In the result, both the appeals having no merit are dismissed. No Costs.”

6. After dismissal of the appeal, Civil Appeal Diary No.36679/2022 was filed, which was dismissed as withdrawn on 10.04.2024 by following order:

“ORDER

Learned Counsel for the appellants after making submissions wants to withdraw the appeal with liberty to raise all objections available in law in the pending proceedings.

Accordingly, the appeal with the liberty as prayed for stands dismissed as withdrawn.”

7. After withdrawal of the appeal in the Supreme Court, the Appellant filed IA No.262/CB/2023, where following prayers were made:

“A. Pass an order declaring I.A. (IB) No. 276/CB/2022 and all consequences arising therefrom as a nullity in law, non-est and void ab initio,

B. Such further and other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

For such reliefs, the Applicants as in duty bound shall ever pray.”

8. The application has now been dismissed by the impugned order. The Adjudicating Authority has taken the view that earlier order passed by the Adjudicating Authority in IA No.276/CB/2020 has been merged in the appellate order, hence, the Adjudicating Authority has no authority to entertain the application. Following has been held in Para 15 of the order:

“15. The liberty was sought and obtained by the applicants to raise all the objections available in law in the pending proceedings. Here the order passed in I.A.No.276/CB/2020 reached its finality, nothing remains pending here to raise any objection. Further, the order passed by this Authority dated 26.04.2022 is confirmed in appeal by the NCLAT-Delhi, and this Authority order was merged with Appeal Order. Since the order passed by this Authority is merged with the Appellate order, this Authority has no authority to entertain this application.”

9. Learned counsel for the Appellant referred to order dated 05.04.2024 passed by the Hon'ble Supreme Court in Miscellaneous application filed by the Appeal, which is as follows:

“O R D E R

1. After arguing the case for some time, learned Senior counsel Mr. R.P. Bhatt appearing for the applicants seeks permission to withdraw the M.A. Diary No. 4522/2024 and the Interlocutory Application No. 25108/2024 seeking modification of this Court's order dated 10-4-2023, with a view to file appropriate proceedings before the appropriate forum as may be permissible under the law.

2. Permission to withdraw the said I.A. and M.A. is granted.

3 Both the applications stand dismissed as withdrawn.”

10. The order of the Hon’ble Supreme Court dated 10.04.2024 on which reliance has been placed by the Appellant was order permitting the appellant to withdraw with liberty to take such remedy as permissible under law, which cannot be held to clothe the Appellant with right before the Adjudicating Authority to file an application which is virtually to review the earlier order passed by the Adjudicating Authority in IA No.276/CB/2020. The liberty was granted to file appropriate proceedings in according with law which cannot be read to mean that the Supreme Court granted permission to review the same order which has been affirmed by the appellate tribunal against which order in Hon’ble Supreme Court a Civil Appeal was filed by the Appellants which was dismissed as withdrawn. When the appeal was dismissed as withdrawn, the order passed in IA No.276/CB/2020 became final. The order of the

Adjudicating Authority merged with the order dated 30.09.2022 passed by this Tribunal. Both the Civil Appeal and Clarification Application before the Hon'ble Supreme Court were dismissed as withdrawn, which order cannot give any further right to the Appellant to prosecute and ask for allowing application IA No.262/CB/2023. We, thus, do not find any error in the order of the Adjudicating Authority rejecting IA No.262/CB/2023. There is no merit in the appeal. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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