

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

**Comp. App. (AT) (Ins) No. 285 of 2023 &**  
**IA No. 1976 of 2023**

**IN THE MATTER OF:**

**Suniel Dhandhanian & Anr.**

**...Appellant**

**Versus**

**Dr.Vichitra Narayan Pathak**  
**IRP/Resolution Professional for Golden**  
**Tabacco Ltd.**

**...Respondents**

**Present:**

**For Appellant : Ms. Purti Gupta, Ms. Heena George, Advocates**  
**For Respondents : None**

**O R D E R**

**Per- Justice Rakesh Kumar Jain (Oral)**

**09.08.2023** Appellants are the Members of the Suspended Board of Directors of M/s. Golden Tobacco Ltd. (Corporate Debtor) who are aggrieved against the order dated 23.02.2023 passed by the 'National Company Law Tribunal, Ahmedabad Court-2 (hereinafter referred as to 'the Adjudicating Authority') by which an application bearing Misc. Application No. 09 of 2022 in C.P. (IB) No. 268 of 2020 filed under Section 19 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as to 'The Code') by the IRP in which the Adjudicating Authority issued a direction to the Suspended Management to handover all the requisite documents/records of the Corporate Debtor to the IRP within one-week observing that no one had appeared on behalf of Suspended Management in spite of service of notice.

2. Counsel for the Appellant has submitted that the application under Section 7 of the Code was filed by M/s.Arrow Engineering Ltd. (Financial Creditor) against the Golden Tobacco Ltd (Corporate Debtor) which was admitted on 07.06.2022 and Vichitra Narayan Pathak was appointed as IRP.

3. It is submitted that during the pendency of the proceedings, IRP filed an application bearing Misc. Application No. 09 of 2022 under Section 19 of the Code in which first order was passed on 22.11.2022 to the following effect:

*“Mis. A/09(AHM) 2022*

*Application is filed by Resolution Professional under Section 19 of IBC, 2016 against the ex-directors.*

*Issue Notice to Respondents Nos.1 and 2.*

*List on 30.11.2022”*

4. It is further submitted that thereafter the case was adjourned to 30.11.2022, 22.12.2022, 19.01.2023, 25.01.2023 and finally on 23.02.2023, the impugned order was passed which read as under:

*“Mis. A/09(AHM) 2022*

*Applicant is filed U/s19 of IBC, 2016. Learned Counsel for the IRP appeared. No one appeared for Suspended Management in spite of service of notice. We direct the suspended Management of the Corporate Debtor to handover all the requisite documents/records of the Corporate Debtor to the IRP within one week.*

*List for further consideration on 29.03.2023.*

*IA 560 of 2022, IA 597 of 2022, IA 627 of 2022 & IA 692 of 2022*

*List for further consideration on 29.03.2023.”*

5. Counsel for the Appellant has submitted that the impugned order is unsustainable in law because no notice was ever served upon the Appellant of the Application No.09 of 2022 and the Adjudicating Authority has wrongly recorded in the impugned order that no one had appeared on behalf of Suspended Management despite service of notice.

6. Counsel for the Appellant has referred to Rule 37, 38 & 105 of the NCLT Rules, 2016 (for short ‘Rule’) pertaining to notice to the opposite parties, service of notices and processes & Issue of notice. The aforesaid Rules are reproduced as under:

**37. Notice to Opposite Party.-**

*(1) The Tribunal shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice. Such notice in Form No. NCLT.5 shall be accompanied by a copy of the application with supporting documents.*

*(2) If the respondent does not appear on the date specified in the notice in Form No. NCLT.5, the Tribunal, after according reasonable opportunity to the respondent, shall forthwith proceed ex-parte to dispose of the application.*

*(3) If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit and*

*along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.*

### **38. Service of Notices and processes.-**

*(1) Any notice or process to be issued by the Tribunal may be served by post or at the e-mail address as provided in the petition or application or in the reply;*

*(2) The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal; -*

*(a) by hand delivery through a process server or respective authorised representative;*

*(b) by registered post or speed post with acknowledgment due; or*

*(c) service by the party himself.*

*(3) Where a notice issued by the Tribunal is served by the party himself by hand delivery, he shall file with the Registrar or such other person duly authorised by the Registrar in this behalf, the acknowledgment together with an affidavit of service and in case of service by registered post or by speed post, file with the Registrar, or such other person duly*

*authorised by the Registrar in this behalf, an affidavit of service of notice alongwith the proof of delivery.*

*(4) Notwithstanding anything contained in sub-rules (1) and (2), the Tribunal may after taking into account the number of respondents and their place of residence or work or service could not be effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.*

*(5) A notice or process may also be served on an authorised representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorised to accept a notice or a process, and such service on the authorised representative shall be deemed to be a proper service.*

*(6) Where the Tribunal directs a service under sub-rule (4), such amount of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the registry of the Tribunal by the petitioner or applicant.*

### **105. Issue of notice.—**

*(1) Where notice of an appeal or petition for caveat or interlocutory application is issued by the Tribunal, copies of the same, the affidavit in support thereof and if so ordered by the Tribunal, the copy of other documents filed therewith, if any, shall be served along with the notice on the other side.*

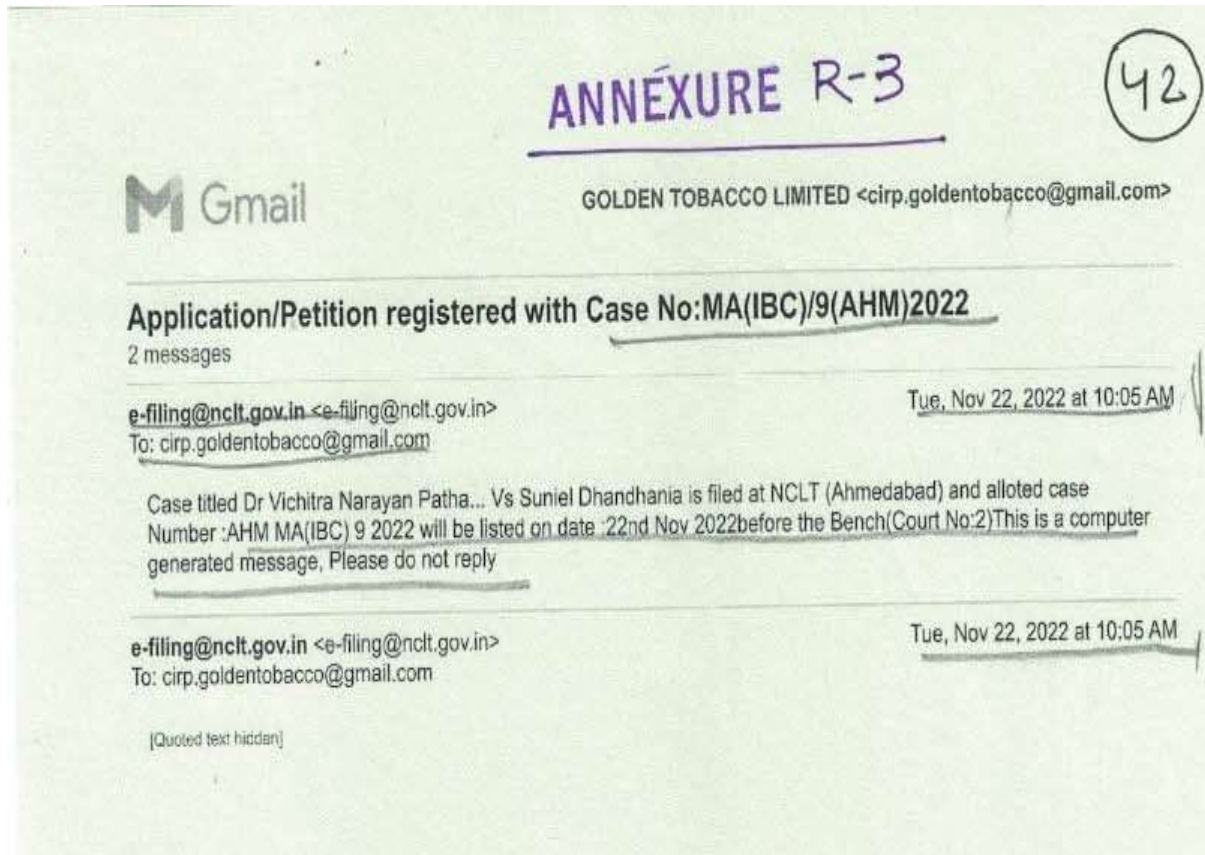
*(2) The aforesaid copies shall show the date of presentation of the appeal or petition for caveat or interlocutory application and the name of the authorised representative, if any, of such party with his full address for service and the interim order, if any, made thereon.*

*(3) The Tribunal may order for issuing notice in appropriate cases and also permit the party concerned for service of the said notice on the other side by Dasti and in such case, deliver the notice to such party and it is for such party to file affidavit of service with proof.*

*(4) Acknowledgement under sub-rule (3) shall be filed by the party with the Registry before the date fixed for return of notice”*

7. Since no one appeared on behalf of the Respondent to contest this appeal, therefore, counsel for the Appellant herself referred to an email dated 22.11.2022 as per which information was given regarding the listing of the

application for the first time on 22.11.2022. The email dated 22.11.2022 is reproduced as under:



8. Counsel for the Appellant has submitted that notice of any Interlocutory Application is required to be issued in terms of Rule 37 & 38 of the Rules coupled with Rule 105 as per which copy of the application has also to be served at the time of issuance of notice, therefore, there was no notice in accordance with law which is stated to have been served upon the Appellant herein.

9. Counsel for the Appellant has also fairly referred to Rule 49 of the Rules, which read as under:

*“49. Ex-parte Hearing and disposal.- (1) Where on the date fixed for hearing the petition or application or on any other date to*

*which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.*

*(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit.*

*Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.”*

10. As per the aforesaid Rules, in case, the Appellant being the Respondent in the application who was proceeded against ex parte, could have filed an application before the same court for setting aside the impugned order by recalling the same but no such effort was made at that time rather the present appeal has been filed.



11. After hearing counsel for the Appellant, we are of the considered opinion that it would be just and expedient if an application is filed by the Appellant in terms of Rule 49 of the Rules before the Adjudicating Authority who has passed the impugned order for the purpose of recalling the same on the ground that the Appellant was never served with the notice of the court and the email was only computer generated, therefore, it does not fall within the ambit of due notice as required by the Rules.

12. Consequently, the present appeal is hereby disposed of, without commenting on the merits of the case and liberty is extended to the Appellant to file an appropriate application, in terms of Rule 49 of the Rules, for recalling the impugned order.

13. In case, any such application is filed by the Appellant before the Adjudicating Authority, the same shall be considered by the Adjudicating Authority and be disposed off by passing a speaking order after giving notice to the opposite party. The Appellant shall appear before the Adjudicating Authority on 25<sup>th</sup> August, 2023 for the purpose of filing the application. If any, such application is filed, the Adjudicating Authority shall make all endeavours to decide the same expeditiously but preferably within a period of 15 days thereafter by passing a speaking order.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Naresh Salecha]**  
**Member (Technical)**

*Raushan/Kam.*