

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 813 of 2024

IN THE MATTER OF:

Ankit Metal & Power Ltd.

...Appellant

Versus

UCO Bank

...Respondent

Present:

**For Appellant : Mr. Kumar Anurag Singh, Mr. Zain A. Khan and
Mr. Anish Ahlawat, Advocates.**

**For Respondent : Mr. Sarfraz Khan, Mr. Mirza Amir Baig and Mr.
Abdul Wahid, Advocates.**

O R D E R
(Hybrid Mode)

30.04.2024: Heard Counsel for the Appellant as well as Counsel appearing on behalf of the Respondent.

2. This Appeal has been filed against the Order dated 18.04.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) in Section 7 application which has been filed by the Respondent-UCO Bank.

3. The Adjudicating Authority on 18.04.2024 passed the following order:

1. Learned Sr. Counsel/Ld. Counsel for the Financial Creditor present.

2. Reply affidavit that was directed to be filed in terms of our earlier order dated 8th April, 2021 at the time to file reply affidavit stands extended to a further period of seven days i.e. till Thursday. Thereafter, the right shall stands closed.

*3. List the matter for argument on **29.04.2024**.*

4. We also asked for copies from his own CA."

4. The application which was filed by the UCO Bank under Section 7 was admitted by an order dated 12.12.2023 against which Comp. App. (AT) (Ins.) No. 6-7 of 2024 was filed by the Suspended Director of the Corporate Debtor,

which Appeal has been allowed by this Tribunal vide its order dated 12.03.2024. In the said Appeal, Appellant has raised issue with regard to the certain documents which were called by the Adjudicating Authority from the Chartered Accountant (CA) who has shared those documents.

5. This Tribunal took the view that there is miscarriage of justice since Principle of Natural Justice were violated since the Corporate Debtor was not given any opportunity to have its say on the said documents. This Tribunal in **Comp. App. (AT) (Ins.) No. 6-7 of 2024** in the matter of '**Subham Bhagat**' **Vs. 'M/s. Aniket Metal & Power Limited & Anr.'**, ultimately allowed the Appeal and issued the following directions:

“15. In such circumstances, the present appeal is hereby allowed. The impugned order is set aside. The orders passed by the Adjudicating Authority initiating CIRP against the Corporate Debtor and appointing Interim Resolution Professional and all other orders pursuant to the impugned order are set aside. The Interim Resolution Professional shall be paid the actual expenses incurred and fees by the Financial Creditor on production of invoices. CP (IB) No. 1420/MB-IV/2020 is restored and the matter is remanded back to the Adjudicating Authority to decide again in accordance with law after hearing all the parties with respect to financial statements which have been submitted by the CA. The parties are directed to appear before the Tribunal within ten days from the date of the order. We however add that we are not expressing our views on the merits of the matter and it will remain open to the parties to raise all contentions. We expect the Adjudicating Authority to make all endeavours to complete the hearing within a period of two months from the date of appearance of the parties before the Tribunal. No costs.”

6. Thus, in pursuance of the remand order passed by this Tribunal on 12.03.2024, the application was to be heard, on which order dated 18.04.2024 was passed.

7. Counsel for the Respondent submitted that after the remand the Adjudicating Authority has granted an opportunity and directed both the parties to be ready for hearing on 08.04.2024.

8. Counsel for the Appellant submits that the Adjudicating Authority ought not to have issued the following directions:

“4. We also asked for copies from his own CA”.

9. The Adjudicating Authority by order dated 18.04.2024 extended the time for filing the Reply for the further period of 7 days and directed for copies from his CA.

10. This Tribunal when allowed the earlier Appeal and remanded the matter back to the Adjudicating Authority to decide again in accordance with law after hearing all the parties with respect to Financial Statement which has been submitted by the CA. Therefore, Financial Statement which was submitted by the CA are still to be examined and decided by the Adjudicating Authority.

11. The submission of the Counsel for the Appellant that Adjudicating Authority could not have asked for copies from his own CA is beyond the jurisdiction cannot be accepted.

12. Adjudicating Authority is still to take a decision on the Financial Statements after hearing the parties and merely because Adjudicating Authority has asked the copies from his own CA, we do not find any ground to entertain this Appeal at this stage.

13. Learned Counsel for the Appellant has also relied on the Judgment of the Hon'ble Supreme Court in the matter of '**Rajendra Narottamdas Sheth**'

Vs. `Chandra Prakash Jain & Anr.`, reported in **(2022) 5 SCC 600**. He has

relied on paragraphs 28 & 29 of the Judgment which is as follows:

“28. *There is no dispute that the date of default in this case is 30.09.2014, as mentioned by the financial creditor in its application under Section 7. A copy of the debit balance confirmation letter dated 07.04.2016 was filed along with the application. As the application was filed only on 25.04.2019, which is beyond a period of three years even after taking into account the debit balance confirmation letter dated 07.04.2016, the application was barred by limitation. However, the Corporate Debtor had, in its reply before the Adjudicating Authority, placed on record a letter dated 17.11.2018, which detailed the amount repaid till 30.09.2018 and acknowledged the amount outstanding as on 30.09.2018. On the basis of this letter and the record showing that the Corporate Debtor had executed various documents amounting to acknowledgement of the debt even in the financial year 2019-20, the NCLT was of the opinion that the application was filed within the period of limitation. The said view was upheld by the NCLAT.*

29. *We have already held that the burden of prima facie proving occurrence of the default and that the application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor. While the decision to admit an application under Section 7 is typically made on the basis of material furnished by the financial creditor, the Adjudicating Authority is not barred from examining the material that is placed on record by the corporate debtor to determine that such application is not beyond the period of limitation. Undoubtedly, there is sufficient material in the present case to justify enlargement of the extension period in accordance with Section 18 of the Limitation Act and such material has also been considered by the Adjudicating Authority before admitting the application under Section 7 of the Code. The plea of Section 18 of the Limitation Act not having been raised by the Financial Creditor in the application filed under Section 7 cannot come to the rescue of the Appellants in the facts of this case. It is clarified that the onus on the financial creditor, at the time of filing an application under Section 7, to prima facie demonstrate default with respect to a debt, which is not time-barred, is not sought to be diluted herein. In the present case, if the documents constituting*

acknowledgement of the debt beyond April, 2016 had not been brought on record by the Corporate Debtor, the application would have been fit for dismissal on the ground of lack of any plea by the Financial Creditor before the Adjudicating Authority with respect to extension of the limitation period and application of Section 18 of the Limitation Act.”

14. In the above Judgment, Hon’ble Supreme Court has held that burden is on the Financial Creditor to prove that there is a debt and default and application is within time. The Hon’ble Supreme Court has further observed that the Court can look into the documents which are on the record filed by the Corporate Debtor for deciding the issues.

15. This Tribunal has already directed to decide the matter within a period of two months from the date of appearing by the party. We thus do not find any ground to entertain in the Appeal.

16. We fail to see that how the above Judgment helps the Appellant in the present case. The Adjudicating Authority as per the remand order has still to take a decision with regard to the Financial Statement which was produced by the Chartered Accountant.

The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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

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