

NATIONAL COMPANY LAW APPELLATE TRIBUNAL. PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 554 of 2022

IN THE MATTER OF:

Daimler Financial Services India Pvt. Ltd.

...Appellant

Versus

Ankit Kr. Aggarwal & Anr.

...Respondents

Present:

For Appellant : Mr. Prasouk Jain, Ms. Kshirja Agarwal, Adv.

For Respondent : Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Sajal Jain, Mr. Karan Kohli, Supriyo Banerjee, Advocates for R2

O R D E R

PER: JUSTICE RAKESH KUMAR JAIN:

This order is being passed in the pending appeal which has been filed by a secured financial creditor whose claim is stated to have been rejected by the Resolution Professional (RP) /Respondent No. 1 of M/s Mass Metals Pvt. Ltd. (Corporate Debtor) on the ground of delay in filing the claim.

2. The Resolution Professional (Respondent No. 1) filed an application under Section 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 (In short 'Code') r/w 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (in short 'Regulations') for approval of the resolution plan submitted by the consortium of Rajesh Grover (Promoter of the Corporate Debtor) and Vishnu Gopal Gupta (Collectively hereinafter referred to as the SRA), was duly approved in the 11th meeting of the CoC held on 02.09.2020 with 79.48% of voting share which has been approved by the impugned order passed by the Adjudicating Authority on 21.02.2022.

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3. Notice in this appeal was issued on 20.05.2022 and at that time Advocate Honey Satpal caused appearance on behalf of the RP/Respondent No. 1. On 12.10.2022, Counsel appearing on behalf of the RP pleaded no instructions and prayed that she may be allowed to withdraw her appearance on behalf of the Respondent No. 1. The prayer was allowed on the same day i.e. 12.10.2022 which is reproduced as under:-

“Learned Counsel for the Appellant prays for and is allowed two weeks’ time to file Rejoinder to the Reply received from Respondent No. 2.

Learned Counsel Ms. Honey Satpal appearing for Respondent No.1 submits that no instructions has been received from Respondent No.1, therefore, she want to withdraw her appearance on behalf of Respondent No.1.

Prayer is allowed.

List this appeal on 10th November, 2022.”

4. Thereafter, on 30.01.2023, fresh notice was issued to the RP. The order is reproduced as under:-

“It is submitted that the learned Counsel who appeared on behalf of Resolution Professional has withdrawn from the proceeding. Let fresh Notice be issued to the Resolution Professional within a week. List this appeal again on 22nd February, 2023.”

5. On 22.02.2023, the following order was passed which is reproduced as under:-

“The following order was passed on 30.01.2023:

“It is submitted that the learned Counsel who appeared on behalf of Resolution Professional has withdrawn from the proceeding. Let fresh Notice be issued to the Resolution Professional within a week. List this appeal again on 22nd February, 2023”

According to Counsel for the Appellant, Notice to Respondent No.1 was served on the addresses mentioned in the memo of parties but no one has put in appearance on his behalf. However,

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Counsel appearing on behalf of Respondent No.2 has submitted that the address of Respondent No.1, downloaded from the IBBI Website, is different from the address given in the memo of parties. He has thus, requested that Respondent No.1 may again be served notice on the new address:

In view of the aforesaid facts and circumstances of the case, let fresh notice be issued to Respondent No.1 at the following address:

Mr. Ankit Kumar Aggarwal E-302, Tower-E, Sector – 78, Noida – 201307 Email- ankit.agarwal@outcomess.com

It is needless to mention that requisites and process fee shall be filed by the Appellant for this purpose within a week. List again on 24th March, 2023.”

6. On 24.03.2023, efforts were again made for the service of notice upon the RP/R1 and the following order was passed:-

On the last date of hearing, i.e. 22.02.2023, the following order was passed:

“The following order was passed on 30.01.2023:

“It is submitted that the learned Counsel who appeared on behalf of Resolution Professional has withdrawn from the proceeding. Let fresh Notice be issued to the Resolution Professional within a week. List this appeal again on 22nd February, 2023”

According to Counsel for the Appellant, Notice to Respondent No.1 was served on the addresses mentioned in the memo of parties but no one has put in appearance on his behalf. However, Counsel appearing on behalf of Respondent No.2 has submitted that the address of Respondent No.1, downloaded from the IBBI Website, is different from the address given in the memo of parties. He has thus, requested that Respondent No.1 may again be served notice on the new address:

In view of the aforesaid facts and circumstances of the case, let fresh notice be issued to Respondent No.1 at the following address:

Mr. Ankit Kumar Aggarwal E-302, Tower-E, Sector – 78, Noida – 201307 Email- ankit.agarwal@outcomess.com

It is needless to mention that requisites and process fee shall be filed by the Appellant for this purpose within a week. List again on 24th March, 2023.”

As per the office report, notice issued to Mr. Ankit Kumar Agarwal has been received back with an endorsement of “incomplete address, hence returned”. It is submitted by Counsel for
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Appellant that perhaps the addressee (Mr. Ankit Kumar Agarwal) is playing hide and seek with the court and is not taking the notice deliberately. Counsel for the Appellant has also suggested that the notice may be served to RP (Ankit Kumar Agarwal) on his email. She has also provided three emails which are as under.

“ankitaggarwal@outmess.com

legal@primusresolutions.in

massmetals@primusresolutions.in”

The Registry is directed to serve the notice of this case to Mr. Ankit Kumar Agarwal on the aforesaid three emails.

At this stage, counsel for the Appellant has also submitted that vide order dated 10.11.2022, she was allowed to file written submissions in not more than three pages along with relevant judgements. She has submitted that though the written submissions have already been filed in the Registry but the relevant judgments could not be filed. She has requested that she may be permitted to file the relevant judgment as well. Let the judgments be filed highlighting the relevant paragraph.

For awaiting the appearance of Mr. Ankit Kumar Agarwal through the mode of service i.e. email. Adjourned to 24th April, 2023.”

5. On 24.04.2023, the following order was passed:-

“From the perusal of the Order dated 24.03.2023 it appears that notice was issued to RP (Ankit Kumar Agarwal) through e-mail on following e-mails which have been mentioned as under:-

“ankitaggarwal@outmess.com

legal@primusresolutions.in

massmetals@primusresolutions.in”

From the perusal of the office note dated 29.03.2023 it reveals that notice to Respondent No. 1 was sent on 28.03.2023 on his e-mail.

Today, when the case was called out, nobody appears on behalf of the Respondent No. 1.

Learned Counsel for the Appellant submitted that notice was issued to Respondent No. 1 on his postal address but has been received back.

It is directed to the Learned Counsel for Appellant to take fresh steps for issuance of Notice on Respondent No. 1 by both modes i.e. through speed post and e-mail, within two weeks from today.

List this matter again before the regular bench on 25th May, 2023 under the same heading.”

6. On 25.05.2023, the following order was passed :-

“On the last date of hearing i.e. 24.04.2023, Counsel for Appellant was directed to take fresh steps for issuance of notice on Respondent No.1 by both modes i.e. through speed post and e-mail, within two weeks from that date.

Apparently, the said order has not been complied with.

Be that as it may, let fresh notice be issued to Respondent No.1 by both modes i.e. through speed post and all the three emails mentioned in the memo of appeal as well as mentioned in the order dated 24.04.2023.

The Appellant shall deposit the requisite expenses with the Registry for the purpose of issuance of notice through speed post.

Counsel for Appellant and the Registry shall send the notice to Respondent No.1 through all the three emails.

Adjourned to 20th July, 2023.”

7. On 20.07.2023, the following order was passed:-

“In this case, the Resolution Professional is not appearing despite all efforts have been made. He has been served through speed post and also on his email.

We have requested the Counsel for SRA to assist in this matter. Adjourned to 21st July, 2023 at no. 1.”

8. Thereafter on 21.07.2023, the following order was passed and the matter was reserved regarding a decision to be taken on the conduct of the RP and as to what measures can be taken against him.

“This appeal has arisen from the order dated 21.02.2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) by which an application filed by the Resolution Professional under Section 30(6) and 31(1) of the Code has been allowed.

2. Notice in this appeal was issued on 20.05.2022 and at that time the RP was represented by an advocate, however, on 12.10.2022 Counsel appearing on behalf of the RP pleaded no instructions on his behalf and requested to withdraw from the case. The prayer was allowed vide order dated 12.10.2022 which is reproduced as under:-

“Learned Counsel for the Appellant prays for and is allowed two weeks’ time to file Rejoinder to the Reply received from Respondent No. 2.

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Learned Counsel Ms. Honey Satpal appearing for Respondent No.1 submits that no instructions has been received from Respondent No.1, therefore, she want to withdraw her appearance on behalf of Respondent No.1. Prayer is allowed. List this appeal on 10th November, 2022.”

3. Since, earlier Counsel appearing on behalf of the RP pleaded no instructions, therefore, as a precautionary measure, notice was issued by the Court to the RP on 30.01.2023, the order is reproduced as under:-

“It is submitted that the learned Counsel who appeared on behalf of Resolution Professional has withdrawn from the proceeding. Let fresh Notice be issued to the Resolution Professional within a week. List this appeal again on 22nd February, 2023.”

4. Thereafter on 22.02.2023, the Appellant was directed to deposit process fee for service of notice upon the RP. Then on 24.03.2023, the following order was passed which is reproduced as under:-

“On the last date of hearing i.e. 22.02.2023, the following order was passed:

“The following order was passed on 30.01.2023:

“It is submitted that the learned Counsel who appeared on behalf of Resolution Professional has withdrawn from the proceeding. Let fresh Notice be issued to the Resolution Professional within a week. List this appeal again on 22nd February, 2023”

According to Counsel for the Appellant, Notice to Respondent No.1 was served on the addresses mentioned in the memo of parties but no one has put in appearance on his behalf. However, Counsel appearing on behalf of Respondent No.2 has submitted that the address of Respondent No.1, downloaded from the IBBI Website, is different from the address given in the memo of parties. He has thus, requested that Respondent No.1 may again be served notice on the new address:

In view of the aforesaid facts and circumstances of the case, let fresh notice be issued to Respondent No.1 at the following address:

Mr. Ankit Kumar Aggarwal E-302, Tower-E, Sector – 78, Noida – 201307 Email- ankit.agarwal@outcomess.com

It is needless to mention that requisites and process fee shall be filed by the Appellant for this purpose within a week. List again on 24th March, 2023.”

As per the office report, notice issued to Mr. Ankit Kumar Agarwal has been received back with an endorsement of “incomplete address, hence returned”. It is submitted by Counsel for Appellant that perhaps the addressee (Mr.Ankit Kumar Agarwal) is playing hide and seek with the court and is not taking the notice deliberately. Counsel for the Appellant has also suggested that the notice may be served to RP (Ankit Kumar Agarwal) on his email. She has also provided three emails which are as under.

“ankitaggarwal@outmess.com
massmetals@primusresolutions.in”

legal@primusresolutions.in

For awaiting the appearance of Mr. Ankit Kumar Agarwal through the mode of service i.e. email. Adjourned to 24th April, 2023.”

5. On 24.04.2023 the following order was passed:-

“From the perusal of the Order dated 24.03.2023 it appears that notice was issued to RP (Ankit Kumar Agarwal) through e-mail on following e-mails which have been mentioned as under:-

“ankitaggarwal@outmess.com legal@primusresolutions.in
massmetals@primusresolutions.in”

From the perusal of the office note dated 29.03.2023 it reveals that notice to Respondent No. 1 was sent on 28.03.2023 on his e-mail. Today, when the case was called out, nobody appears on behalf of the Respondent No. 1.

Learned Counsel for the Appellant submitted that notice was issued to Respondent No. 1 on his postal address but has been received back.

It is directed to the Learned Counsel for Appellant to take fresh steps for issuance of Notice on Respondent No. 1 by both modes i.e. through speed post and e-mail, within two weeks from today.

List this matter again before the regular bench on 25th May, 2023 under the same heading.”

6. Despite the fact that the RP is stated to have been served on his email about the pendency of this appeal but he did not appear either in person or through an advocate for the reasons best known to him.

7. We have sought assistance of Mr. Abhishek Anand (Counsel for Respondent No. 2) apprise us as to what should be done in such circumstances when the RP is playing hide and seek with the Court.

8. Counsel for Respondent No. 2 has made submissions in regard to the conduct of the RP and the suitable measures to be taken by the Court against him. The order is thus reserved today regarding conduct of the RP and to decide as to what measures can be taken against him.

9. Mr. Abhishek Anand (Counsel for Respondent No. 2) is directed to submit the additional documents as prayed within two days.”

9. The Insolvency Proceedings of the Company were initiated by order of the Tribunal on admission of the Application. The Tribunal appointed the Interim Resolution Professional (IRP) for management of the affairs of the

Corporate Debtor. The duties of the IRP are mentioned in Section 18 of the Code. The IRP was then appointed as RP to conduct the CIRP and his duties are provided in Section 24 of the Code. The RP continues to manage the affairs of the Corporate Debtor till the stage of resolution and if it is not resolved then the liquidator comes in who is again an Insolvency Professional who has also been assigned duties in chapter III of the Code dealing with the liquidation process. Thus, CIRP proceedings initiated by the Tribunal with admission of the application either comes to an end with the resolution, approval of the resolution plan or when liquidation process comes to an end. It is needless to mention that RP plays a significant role during the period of CIRP because he exercises the power of board of director of the Company undergoing resolution, manages the operations of the Company as a going concern, protects the value of its property and complies with the applicable laws on its behalf. The stakeholders are required to cooperate with him in discharging his function. The RP acts as an officer of the Court.

10. In such circumstances, where the scheme of the Act is such in which the RP has a pivotal role, does it behove for the RP to avoid his appearance in the Court despite various notices issued to him and is not even keeping a track of the case when he had engaged his counsel, namely, Honey Satpal who had to leave the case in between only for the reason that she was not receiving any instructions from him.

11. In such circumstances, we deprecate the conduct of the RP in the strongest words and direct the Registrar of this Court to send this order to the Insolvency and Bankruptcy Board of India (IBBI) and also to the agency

to which the RP is associated/registered, for the purpose of taking necessary action, in accordance with law so that this Court may not be taken for a ride by the RP, like Respondent No. 1 in future because of whose absence, the present appeal is not making any head way.

12. With these observations, the matter which has been kept by us for our consideration by an order dated 21.07.2023 is hereby disposed of.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
02nd August, 2023.

Sheetal