

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Comp. App. (AT) (CH) (Ins) No. 439 of 2023
IA Nos. 1354, 1353, 1355, 1352 of 2023

IN THE MATTER OF:

**Mr. Jasti Samba Siva Rao Suspended Director of
Suspended Board Of Directors of Corporate Debtor
i.e. Madhucon Projects Ltd.**

...Appellant

Versus

M/s Srei Equipment Finance Ltd. & Anr.

...Respondents

Present

For Appellant : Mr. HK Chaturvedi, Advocate
Anjali Chaturvedi, Udit Chaturvedi, Sagar Chaturvedi,
Megha Chaturvedi & Ramaditya Jadon, Advocates
For Respondents : Mr. P.H. Arvinth Pandian, Sr. Advocate
For Mr. Anant Merathia, Advocate

O R D E R
(Virtual Mode)

12.12.2023: **Comp. App. (AT) (CH) (Ins) No. 439 of 2023**

This appeal is directed against the order dated 08.12.2023, passed by the National Company Law Tribunal, Hyderabad Bench –I by which an application bearing Rst. A (IBC) No. 25 of 2023 filed in CP (IB) No. 12/7/HDB/2021 by the financial creditor for revival of the main petition has been allowed.

Shorn of unnecessary details, an application under Section 7 was filed by the financial creditor for initiation of CIRP proceedings against the corporate debtor (M/s. Madhucon Projects Limited) in which an order was passed on 29.03.2023 which read as under:

*“28. We have carefully considered the Decree dt. 09.08.2019 issued in favor of corporate debtor by District Judge-XIV, Cum Presiding Officer, Commercial Court, Dhanbad for an amount of Rs. 163,55,52,895/- and an Arbitral Award dt. 17.01.2021 for a sum of Rs. 52,62,76,413/- which together make the total amount of receivables much greater than the defaulted debt, besides the unrebutted plea that the corporate debtor is a running concern having more than 5000 employees, and are of the firm view that the facts and circumstances of this case warrant keeping the admission of the corporate debtor into Corporate Insolvency Resolution Process (CIRP) in **abeyance for three months** from the date of this order, however by giving liberty to the applicant/financial creditor to **approach this Tribunal if its dues continue to remain unpaid within three months from the date of this order.***

This Company Petition is allowed to the extent indicated above and disposed of. No costs”.

Two appeals came to be filed against the order dated 29.03.2023 i.e. appeal no. 160 by the financial creditor and appeal no. 161 by the corporate debtor and both are pending for hearing on 29.01.2024.

During the pendency of the aforesaid appeals, application bearing Rst. A (IBC) No. 25 of 2023 was filed by the financial creditor in which an order was passed on 01.12.2023 which is reproduced as under:

“Let the Financial Creditor issue notice to the Corporate Debtor and matter be listed after one week. Matter adjourned to 08.12.2023.

Rst. A (IBC) 25/2023

Learned Counsel Mr. Vishwajith, for counsel on record Mr. DishitBhattacharjee, for applicant present through Video Conference. Matter passed over.

Matter called again. Heard Learned Counsel Mr. Vishwajith, for counsel on record Mr. DishitBhattacharjee, for applicant. This is an application filed pursuant to the direction of this Tribunal in the order dated 29.03.2023 in CP No 12/2021. where under this Tribunal while allowing the company petition has orders as below.

"It is the case of the petitioner that despite lapse of three months from the date of the order the Corporate Debtor had failed to discharge the Financial Debt as such this application is filed for restoration of the above Company Petition and for passing further orders."

*Heard, learned counsel for the applicant. Perused the record. We are satisfied with the reasons mentioned. **Hence CP. No 12/2021 as restored application**".*

Thereafter, the case was listed on 08.12.2023 and it is recorded in paragraph 6 of that order that “Mr. Arun, present through video conference and stated that he is legal manager of the corporate debtor (Madhucon Projects Ltd) and he has received copy of the order by this Tribunal dated 01.12.2023 only on 07.12.2023 and therefore he seeks time”. It is the case of the appellant that the tribunal did not grant any time to file reply and proceeded to decide the application on the same day, allowing revival of the application filed under Section 7 and consequently admitted the company petition as well.

Counsel for the appellant has submitted that the tribunal has committed a patent error in not providing any opportunity to the present appellant to contest the application filed by the present Respondent (Financial Creditor) which is a violation of Rule 37 of the NCLT Rules, 2016 (Rules). On the other hand, Counsel appearing on behalf of the Respondent has submitted that notice was issued by the order dated 01.12.2023 and in pursuance thereof copy of the application was given by the Respondent to the present Appellant. However, the fact remains that the Tribunal did not grant any opportunity to the present appellant to file a reply/counter to the application before proceeding to decide the same on the same date i.e. 08.12.2023.

We have heard Counsel for the parties and perused the record with their able assistance. The issue involved in this case travels in a narrow compass i.e. as to whether in an application filed by a party, the other party, contesting the application has a right to file reply? Rule 37 of the rules provide for issuance of notice and filing the reply. Rule 37 is 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 affording reasonable opportunity to the respondent, shall forthwith proceed ex-parte to dispose of the application.*

(3) If the respondent contests 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”.

As per rule 37 (1), notice is required to be issued in Form No. NCLT. 5 by the Tribunal which shall accompany copy of the application with supporting documents. As per Rule 37 (3), if the Respondent contest the notice received under Rule 37(1), it may either in person or through an authorised representative file a reply with affidavit and the documents relied upon with advance copy to applicant before the date of hearing.

In the present case, though vide order dated 01.12.2023, the court had asked the financial creditor to issue notice to the corporate debtor which was though not in terms of Rule 37 (1) which mandates that the Tribunal has to issue notice to the Respondent on an application filed by the applicant that too in Form No. NCLT 5 but in case it is presumed that the Respondent (Appellant herein) had the notice of the application yet the Tribunal did not afford an opportunity to the Appellant to file reply though it has been categorically recorded in the impugned order that the legal manager of the appellant had appeared and stated that he had received the copy of the order dated 01.12.2023 only on 07.12.2023 and sought time to contest the application but no time was granted and the application was decided on the same date against the appellant.

In our considered opinion, this is a patent error on the part of the Tribunal as it violates Rule 37 (1) and (3) and in such circumstances we have no other alternative but to set aside the impugned order to afford an opportunity to the appellant to contest the application by filing a reply to the application for restoration which has been filed by the Respondent.

With these observations, the present appeal is hereby allowed. Impugned order is set aside and the matter is remanded back to the Ld. Tribunal to decide the application i.e. Rst. A (IBC) No. 25 of 2023 after affording an opportunity to the present appellant to file reply to the application and thereafter an appropriate order may be passed in accordance with law after hearing both the parties. The parties are directed to appear before the Ld. Tribunal on 22.12.2023.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)