

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 18 of 2021

IN THE MATTER OF:

Arvind Dham

...Appellant

Versus

State Bank of India and Anr.

...Respondents

Present:

For Appellant: Mr. Alok Dhir, Ms. Varsha Banerjee and Mr. Mukund Rawat, Advocates.

For Respondents: Ms. Misha, Mr. Siddhant Kant, Ms. Charu Bansal, Ms. Prabhsimran Kaur and Mr. Vimal Asthana, Advocates for R-1.

Mr. Abhishek Anand, Mr. Kunal Godhwani and Mr. Viren Sharma, Advocates for R-2.

O R D E R

(Through Virtual Mode)

18.01.2021: The issue raised in this appeal against impugned order dated 23rd November, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench New Delhi, Court III ordering appointment of Resolution Professional and interim-moratorium qua the Appellant – Personal Guarantor, is that the impugned order is violative of principles of natural justice and in the teeth of Section 96 of the I&B Code.

2. After hearing Shri Alok Dhir, learned counsel representing the Appellant, Ms. Misha, learned counsel for Respondent No. 1 and Mr. Abhishek Anand, learned counsel for Respondent No.2, we find that the impugned order has been passed in ex-parte. Remedy under Rule 49(2) of the NCLT Rules, 2016 for setting

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aside the impugned order is stated to have been availed by the Appellant. It is submitted that the application is still pending before the Adjudicating Authority. That being the state of affairs, we are of the considered opinion that the instant appeal would not be maintainable as efficacious remedy provided under Rules has already been availed by the Appellant. As regards the concern raised by the learned counsel for the Appellant that the Adjudicating Authority has not disposed off the application, we deem it appropriate to dispose off this appeal with direction to the Adjudicating Authority to take up the application filed by the Appellant under Rule 49(2) of the NCLT Rules, 2016 with notice to the parties and make all endeavours for its expeditious disposal, preferably within 10 days. We make it clear that this application of the Appellant shall be heard and disposed off before according consideration to Report of the Resolution Professional under Section 99 of the I&B Code.

A copy of this order be communicated to the Adjudicating Authority forthwith.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

am/gc