

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

COMPANY APPEAL (AT)No.3 of 2021

IN THE MATTER OF:

**1. Directorate of Economic Offences
Govt. of West Bengal, 5, Council House Street
1st Floor, Kolkata-700001**

**2. Deputy Superintendent of Police,
Directorate of Economic Offences
5, Council House Street, 1st Floor,
Kolkata-700001**

...Appellants

Vs

**1. Binay Kumar Singhania
C/o B.K.S. & Co. Diamond Heritage,
16, Strand Road, Unit-519, 5th Floor
Kolkata-700001**

**2. M/s Bengal Polypet
Jirat Road, New Baigachi
Ashok Nagar 24 Parganas (N)
Kolkata-743222(WB)**

**3. M/s Pincon Spirits Ltd
Wellesley House, 7 Redcross Place
3rd Floor, Kolkata-700001
Through IRP Mr. Binay Kumar Singhania
C/o B.K.S. & Co. Diamond Heritage,
16, Strand Road, Unit-519, 5th Floor
Kolkata-700001**

...Respondents

Present:

For Appellant:-	Ms Nandini Sen, Advocate
For Respondent:-	Mr. Binay Kumar Singhania, Liquidator. Mr. Gaurav Mitra, Mr Kanishk Khetan, Mr Nipun Gautam, Advocates

J U D G M E N T**Jarat Kumar Jain, J:**

The Appellant, 'Directorate of Economic Offences' filed this Appeal against the order dated 18.12.2020 passed by Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) in CP(IB) 93/KB/2018, whereby considering the Respondent No.1's Contempt Application I.A. No. 1348/KB/2020 granted 15 days' time to the Appellant to comply with its earlier order dated 19.02.2020.

2. Relevant facts for this Appeal are that Adjudicating Authority, vide order dated 19.02.2020, allowed the Respondent No.1's application CA(IB) 1741/KB/2018 under Sections 33(5), 60(5)(c) and Section 238 of the Insolvency and Bankruptcy Code, 2016 (IBC) and directed the Appellant to de-attach all the properties attached vide notice dated 16.04.2018 and to restore possession thereof to the Liquidator (Respondent No. 1) within 15 days of the receipt of the copy of the order. Against this order, Appellant has filed Appeal No. CA (AT) (Ins) No. 935 of 2020 on 13.03.2020 before this Appellate Tribunal. The Respondent No. 1 in that Appeal appeared before this Appellate Tribunal on 23.11.2020. So the Respondent No. 1 was well aware that this Appellate Tribunal is seized of the matter. During the pendency of that Appeal, Respondent No. 1 has filed Contempt Application I.A. No. 1348/KB/2020 on 24.11.2020 before the Adjudicating Authority with the allegation that in spite of service of the order

dated 19.02.2020, the contemnor (Appellant herein) has willfully, intentionally and contumaciously failed to comply with the direction of the order dated 19.02.2020 in failing with de-attaching the properties and handover possession to the liquidator (Respondent No. 1). Thus, the officers of the DEO, WB have committed contempt of the Tribunal's order and are, therefore, liable to be punished accordingly.

3. The Appellant appeared before the Adjudicating Authority on 18.12.2020 and submitted that they have preferred an Appeal before this Appellate Tribunal against the order dated 19.02.2020. The Adjudicating Authority noted that there is no stay of the order dated 19.02.2020 granted by the Appellate Tribunal. Adjudicating Authority, by the impugned order, granted 15 days' time to comply with the order dated 19.02.2020. in case they are unsuccessful in obtaining the stay of the order dated 19.02.2020.

4. Being aggrieved with this order, the Appellant has filed this Appeal.

5. Ld. Counsel for the Appellant submitted that the Appellant has already filed an Appeal against the order dated 19.02.2020 before this Appellate Tribunal and on 23.11.2020, on behalf of the Respondent No. 1, Ld. Counsel appeared and prayed for time to file Reply, therefore, the matter was adjourned for 14.12.2020. When the filing of the Appeal was in the knowledge of the Respondent No. 1 therefore, the Appellant has not pressed the application I.A. No. 41 of 2021 for stay of the order dated 19.02.2020. When the Appellate

Tribunal was seized of the matter, the Respondent No. 1 should not have moved Contempt Application. There is nothing on record to presume that officers of the Appellant deliberately and willfully disobeyed the order passed by the Adjudicating Authority. It is also submitted that the allegations are baseless and contumacious. Filing of such Application is clear abuse of process of law. Therefore, liable to be dismissed.

6. Ld. Counsel appearing on behalf of the Respondent No. 1 submitted that in the impugned order there is nothing against the Appellant. Admittedly, there was no stay in regard to order dated 19.02.2020. There is no ground to entertain this Appeal. The Appeal is premature and not maintainable.

7. After hearing Ld. Counsel for the parties, we have considered the submissions.

8. Admittedly, against the order of Adjudicating Authority dated 19.02.2020 the Appellant has filed the Appeal CA(AT) (Ins) No. 935 of 2020 on 13.03.2020 before this Appellate Tribunal and there was no stay of the order dated 19.02.2020. It is also admitted fact that the Respondent No. 1 appeared in the said Appeal before this Appellate Tribunal means Respondent No. 1 was well aware that this Appellate Tribunal was seized of the matter. In such circumstances, Adjudicating Authority passed a conditional order that “in case the Appellant is unsuccessful in obtaining the stay of the order dated

19.02.2020, they have to comply the order within 15 days.” We find no illegality in the impugned order.

9. However, today we have allowed the Appeal CA (AT) (Ins) No. 935 of 2020 and set aside the order dated 19.02.2020 passed by the Adjudicating Authority. Therefore, nothing survives in the Contempt Application as well as in this Appeal.

Thus, the Appeal is disposed of. No order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

New Delhi
04.05.2021

The judgement is pronounced by Mr. Kanthi Narahari for and on behalf of the Bench as per Rule 92 of National Company Law Appellate Tribunal Rules 2016.

Mr. Kanthi Narahari]
Member (Technical)