

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 111 of 2021**

In the matter of:

Mani Kumar Singh

....Appellant

Vs.

Alchemist Asset Reconstruction Company Ltd. & Anr.

....Respondents

Present:

**Appellant: Mr. Susheel Cyriac Joseph, Mr. Ankur S. Kulkarni,
Advocates.**

**Respondents: Mr. Shatadru Chakraborty, Ms. Sonia Dube, Mr.
Anurag Singh, Advocates for R1.**

ORDER

(Through Virtual Mode)

18.02.2021: The sole issue raised in this appeal preferred by a suspended Director of the Corporate Debtor against admission of application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by the 'Alchemist Asset Reconstruction Company Ltd.'- (Financial Creditor) (Respondent No.1) is that the impugned order dated 03.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, admitting CP (IB) No.- 458/ALD/2019 under Section 7 with consequential order of appointment of Interim Resolution Professional (IRP) and imposition of Moratorium cannot be sustained as the impugned order has been passed without hearing the Corporate Debtor.

2. Mr. Susheel Cyriac Joseph, Advocate representing the Appellant submits that the Rules of Natural Justice have been violated inasmuch as the Corporate Debtor has not been granted an opportunity of hearing. This is against record which reveals that the Corporate Debtor, despite being granted number of opportunities failed to file a response in the main petition as also in the application seeking substitution.

Contd/-.....

3. After hearing learned counsel for the parties and going through the impugned order, we find that the Adjudicating Authority has provided as many as seven opportunities to the Corporate Debtor to file reply in the application seeking substitution as also in the application under Section 7 of the 'I&B Code'. In the face of this recorded position, it is not open to the Appellant to raise the issue of Rules of Natural Justice being violated. If despite availing seven opportunities, the Corporate Debtor chose not to file reply, the Adjudicating Authority had no option but to proceed further in terms of the provisions of Section 7(4) of the 'I&B Code'. It was required to pass an order of admission or rejection of the application within 14 days of the receipt of such application. Corporate Insolvency Resolution Process (CIRP) being a time bound process, limited exercise was to be undertaken by the Adjudicating Authority at the pre-admission stage which did not warrant a prolonged hearing. The Adjudicating Authority is required to issue a limited notice to the Corporate Debtor as it is concerned only with the nature of debt viz. that there is a financial debt and default thereof. From the impugned order, we find that the Adjudicating Authority has dealt with all aspects concerning debt and default as required for deriving satisfaction that the application was complete and there was debt and default on the part of the Corporate Debtor in respect of financial debt owed to the Financial Creditor. In fact, the Adjudicating Authority has also considered the effect of amendment introduced by Section 10A of the 'I&B Code' to ensure that the default has occurred before the cut-off date. In the given circumstances, it cannot be said that the Adjudicating Authority has observed Rules of Natural Justice in breach.

4. An attempt was made by learned counsel for the Appellant to demonstrate that the Corporate Debtor had in fact filed its reply. Reference is made to Page 166 of the Appeal Paper Book- Vol.II in this regard, which appears to be a copy of response to the application under Section 7 purportedly drawn up on 24th August, 2020. However, there is no proof that it was filed

before the Adjudicating Authority. The factual assertion in the judicial record i.e. the impugned order in para 9 demonstrating that despite availing seven opportunities, Corporate Debtor failed to put up its response operates as estoppel by record and Appellant cannot be permitted to rebut the same.

5. To be fair to learned counsel for the Respondent No.1, he admitted that the aforesaid response was filed by a faction of the erstwhile Directors but not by the Corporate Debtor. Even if that is true, it had to be ignored by the Adjudicating Authority as in an application under Section 7, it is only the Financial Creditor and the Corporate Debtor who are to be heard. Corporate Debtor herein is a juristic person distinct from its members. Persons claiming to have a stake in the management are not required to be heard in their individual capacity. Therefore, this argument does not in any way help the Appellant.

6. Learned counsel for the Appellant submits that the Appellant is prepared to settle the claim of the Financial Creditor. However, it is brought to our notice by learned counsel for the Respondent No.1 that the Committee of Creditors (COC) constituted as a sequel to the order of admission passed by the Adjudicating Authority is considering a Resolution Plan and Respondent No.1 is not the only Claimant. Therefore, it is for the Corporate Debtor to approach the COC with a settlement which has to be all encompassing.

With the aforesaid observations, the appeal is disposed off.

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

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

AR/g