

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 777 of 2019

IN THE MATTER OF:

Kishan Lal Sharma

.....Appellant

Vs.

Vikram Bajaj

.....Respondent

Present :

For Appellant: Mr. Ashutosh Gupta, Mr. Gaurav Rana, Mr. Abhishek Aggarwal, Advocates

For Respondents: Mr. Abhishek Anand, Advocate

O R D E R

31.07.2019 - The Appellant - erstwhile Director of 'Anil Special Steel Industries Limited' has preferred this appeal against order dated 13th June, 2019 passed by the Adjudicating Authority ('National Company Law Tribunal'), Jaipur whereby Interlocutory Application was filed by the Appellant to set-aside the ex-parte order passed by the Adjudicating Authority on 10th May, 2019 has been rejected.

2. It appears that the Respondent moved before the Adjudicating Authority for action u/s 45 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) and the matter is pending for consideration.

....contd.

3. The Directors and another were noticed including the Appellant but Appellant inspite of granting time failed to file reply-affidavit.

4. On 4th April, 2019, the Adjudicating Authority passed order imposing cost of Rs. 5000/- on the Appellant to be paid in the 'Prime Minister National Relief Fund'.

5. However, on 10th May, 2019 when the matter was taken up, the Appellant was not presented before the Adjudicating Authority and failed to file any reply. On 10th May, 2019, the Appellant's right to file reply was closed.

6. In this background, the Interlocutory Application was filed to set-aside the order dated 10.05.2019 which was rejected by Adjudicating Authority on 13th June, 2019.

7. Learned counsel for the Appellant submitted that Appellant was present on 10th May, 2019 along with the Counsel but the Counsel refused from appearance and for the said reason, therefore, no reply could be filed.

8. It stated that application filed by 'Resolution Professional' for action u/s 45 of the 'I&B' Code is still pending for consideration.

9. Mr. Abhishek Anand, learned counsel appears on behalf of 'Resolution Professional' accepts that no order has been passed by the Adjudicating Authority on the application for action u/s 45 of the 'I&B' Code. ...contd.

10. In the facts and circumstances of the case, we give one opportunity to the Appellant to file reply-affidavit by 9th August, 2019. If such reply is filed, it will be open to the 'Resolution Professional to file rejoinder within a week thereof. However, if no reply is filed by the Appellant within the aforesaid period, the Adjudicating Authority will proceed without reply on the basis of available records after hearing the Appellant.

11. The impugned order stands modified to the extent above.

The appeal stands disposed of with the aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ss/sk