

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 730 of 2020

IN THE MATTER OF:

Yajur Commodities Ltd.

... Appellant

Versus

Nanda Energy Ltd.

...Respondent

Present:

For Appellant : **Mr. Abhinav Anand and Mr. Anubhav Anand Aron,
Advocates**

For Respondent : **Mr. Senthil Jagadeesan and Ms. Suriti Chowdhary,
Advocates**

ORDER
(Through Virtual Mode)

01.09.2020 This appeal has been preferred against the order dated 3rd March, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench-II, Chennai by virtue whereof application filed by the Appellant (Operational Creditor) under Rule 48(2) and Rule 11 of NCLT Rules, 2016 for setting aside of the order dated 4th December, 2019 vide which the Adjudicating Authority dismissed the application under Section 9 of the I&B Code for default, and further seeking the restoration of petition has been dismissed on the ground that the Appellant has asserted facts which are self-contradictory and no ground is made out for restoration.

2. After hearing the learned counsel for the Appellant, we find that the application filed by the Appellant claiming to be an 'Operational Creditor' under Section 9 of the 'I&B Code' against the Respondent (Corporate Debtor) was pending at pre-admission stage and since the Appellant was truant with the Adjudicating Authority and did not appear on 20th November, 2019, pre-emptory

direction seeking its appearance to argue the matter came to be passed and the matter was adjourned to 4th December, 2019. However, the Appellant again failed to appear on that day and the application came to be dismissed for default. Subsequently, the application being I.A.142/IB/2020 was filed for seeking setting aside of the order of dismissal for default passed on 4th December, 2019 with further prayer of restoration of application which came to be dismissed after taking into consideration the contradictory stand taken in the application. Dealing with the aforesaid Interlocutory Application, the Adjudicating Authority has taken note of the ground pleaded for seeking setting aside of the dismissal order which stated that Advocate V. Dinesh Raja appeared on behalf of the Appellant on 4th December, 2019 and filed one page written submissions which was taken on record but could not advance arguments and sought adjournment as his Vakalatnama was not on record. This stand taken by the Appellant was found to be in conflict with the judicial record. While referring to the minutes of the proceedings recorded on 4th December, 2019, the Adjudicating Authority noticed that despite pre-emptory directions given on 20th November, 2019 the Appellant (Operational Creditor) chose to remain absent leaving the Adjudicating Authority with no option but to dismiss the application. It is manifestly clear that the stand taken by the Appellant (Operational Creditor) for setting aside of the dismissal order is against the record and the Appellant was estopped from pleading any fact against the judicial record. Estoppel by record would not permit the Appellant to take a stand in conflict with and contradictory thereto. Therefore, it can be safely stated that no ground, much less a cogent ground warranting setting aside of the dismissal order, was made out by the Appellant.

3. It is indisputable that it was the Appellant's (Operational Creditor's) duty to satisfy the Adjudicating Authority that the operational debt was due and default had been committed in relation thereto by the Corporate Debtor warranting admission of application under Section 9 of the I&B Code. What transpires from the record is that the Appellant/Operational Creditor has played hide and seek with the Adjudicating Authority and instead of satisfying it as regards making out of a case for admission of application under Section 9 of the I&B Code, it has come up with palpably false plea trying to belie the judicial record which it was estopped from doing.

We find no merit in this appeal. The same is dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Venugopal M.]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

/ns/gc/