NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 195 of 2024

[Arising out of Order dated 15.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in IA- 3470/2022 in (IB)-661(PB)2021]

In the matter of:

Ashok Tiwari **...Appellant**

Vs.

DBS Bank India (Ltd.) & Anr. ..... Respondents

For Appellant: **Mr. Gaurav Mitra, Mr. Ishan Roy Choudhury, Mr. S. Anand, Mr. R. Ranjan, Mr. Gunjesh Ranjan, Advocates.**

For Respondents: **Mr. Krishnendu Datta, Sr. Advocate with Mr. Dhruv Malik, Ms. Palak Nanwani, Ms. Versha, Advocates for DBIL.**
Mr. Prafull, Mr. Marshit Khare, Advocates for R-2.

J U D G M E N T
(21st May, 2024)

Ashok Bhushan, J.

This appeal by a Suspended Director of the Corporate Debtor has been filed challenging the order dated 15.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench (Court-II) by which order IA No.3470 of 2022 filed by the Appellant praying for recall of the order dated 25.03.2022 passed by the Adjudicating Authority in Section 7 application filed by DBS Bank India Limited has been rejected. The Appellant aggrieved by the order dated 15.01.2024 has filed this appeal.

2. Brief facts of the case to be noticed for deciding this appeal are:

2.1. The Corporate Debtor- M/s. Vyam Technologies Ltd. was extended various financial facilities by DBS Bank India Limited by sanctioned letter dated 01.08.2011, Rs.25,00,00,000/- debt was granted. On default being committed by the corporate debtor in making the payment, financial creditor filed an OA No.466 of 2015 before the DRT. The Corporate Debtor entered into settlement with the financial creditor and on basis of joint application, consent decree was passed by the Adjudicating Authority on 18.06.2019. By order dated 15.07.2019, DRT awarded an amount of Rs.23,29,19,212.46/- along with interest from the date of O.A till realization. Consequently, recovery certificate was issued in favour of the financial creditor. Corporate debtor filed an appeal before the DRAT which appeal was withdrawn with liberty to file review petition before the DRT. The financial creditor filed an application under Section 7 before the NCLT claiming a default of amount of Rs.483,128,726.42/- till 22.09.2021. In Section 7 application, reliance has also been placed on recovery certificate dated 24.07.2019 issued for recovery of Rs.23,29,19,212.46/-. In Section 7 application, notices were issued by the Adjudicating Authority on 22.02.2022 which were served on Corporate Debtor on 07.03.2022. On 25.03.2022, when the application was listed before the Adjudicating Authority, no reply was filed by the Corporate Debtor. On 25.03.2022, Counsel appeared on behalf of the corporate debtor before the Adjudicating Authority and made a statement that he has not filed any vakalatnama. Neither any reply being filed nor any authorised counsel having put in appearance, the Adjudicating Authority proceeded to hear the

application on merits and by order dated 25.03.2022 admitted Section 7 application. Adjudicating Authority returned a finding on debt and default and admitted Section 7 application. Appellant aggrieved by the order dated 25.03.2022 passed in company petition filed an appeal being Company Appeal (AT) (Insolvency) No.418 of 2022 before this Tribunal. Counsel appearing for the Appellant sought liberty to withdraw the appeal and file an application under Rule 49(2) of the NCLT Rules 2016. This Tribunal noticing the above submission granted liberty to file an application under Rule 49(2) vide its judgment and order dated 04.07.2022. In order dated 04.07.2022, this Tribunal made it clear that it is not expressing any opinion with regard to merits of the application which is to be filed by the Appellant. After the order dated 04.07.2022, appellant had filed an IA No.3470 of 2022 praying for recall of the order dated 25.03.2022 passed by the Adjudicating Authority. This Tribunal while permitting the Appellant to withdraw Company Appeal (AT) (Insolvency) No.418 of 2022 has directed that for period of two weeks' further steps in the CIRP be not taken. Appellant filed another application before the Adjudicating Authority praying for stay of CIRP being IA No.3630 of 2022 on which Adjudicating Authority issued notices on 01.08.2022. Challenging the order dated 01.08.2022, Company Appeal (AT) (Insolvency) Nos. 934-935 of 2022 was filed by the appellant which was disposed on 10.08.2022 observing that the appellant to pursue the application under Rule 49(2) of the NCLT Rules, 2016, which was already filed on 19.07.2022. This Tribunal, however, observed that since both the applications are pending CoC shall not take any further steps in the CIRP and IRP shall ensure that corporate debtor is run

as a going concern. IA No.3470 of 2022 where prayer was made to recall the order dated 25.03.2022 was heard by the Adjudicating Authority and by impugned order dated 15.01.2024, the said application was rejected. Aggrieved by the impugned order dated 15.01.2024 passed in IA No.3470 of 2022, this appeal has been filed. Appeal came for consideration before this Tribunal on 31.01.2024 on which date the appellant prayed for two weeks' time to file an additional affidavit. Time was allowed on 31.01.2024 to the appellant to file an additional affidavit and additional affidavit in pursuance of the said order has been filed by the appellant on 29.02.2024. A short reply has been filed by the Respondent No.1 in the appeal.

3. We have heard Shri Gaurav Mitra, learned senior counsel appearing for the appellant, Shri Krishnendu Datta, learned senior counsel appearing for the Respondent No.1 as well as Counsel appearing for the IRP.

4. Shri Gaurav Mitra, learned senior counsel appearing for the appellant submits that the notices in Section 7 application filed by the financial creditor were served on the corporate debtor only on 07.03.2022 along with the order dated 22.02.2022. On 25.03.2022 which was date fixed before the Adjudicating Authority Counsel appeared and informed that he has been engaged recently but has not filed his vakalatnama who was not heard by the Adjudicating Authority although wanted to take time for filing the reply. It is submitted that the Adjudicating Authority proceeded to hear the application and admit the same on 25.03.2022 which was clear denial of opportunity of the corporate debtor. It is submitted that the order dated 25.03.2022

admitting Section 7 application was challenged by the appellant by Company Appeal (AT) (Insolvency) No.418 of 2022 which appeal was withdrawn by the Appellant with liberty to file an application under Rule 49(2) before the adjudicating authority. It is submitted that the application has been filed on 19.07.2022 under Rule 49(2) being IA No.3470 of 2022 which has been rejected by the adjudicating authority by impugned order. Counsel submits that a Section 7 application has also filed against the corporate guarantor which was also admitted on 29.03.2022 and was also challenged by the corporate guarantor in Company Appeal (AT) (Insolvency) No.464 of 2022 which was allowed by this Tribunal. In Section 7 application filed against corporate guarantor, corporate guarantor has appeared and prayed for time to file reply which was denied. This Tribunal held that denial of time to file reply by corporate debtor is violation of principle of natural justice and this Tribunal has set aside the order dated 29.03.2022 and directed hearing of application afresh. It is submitted that the judgment of this Tribunal dated 14.07.2022 passed in Company Appeal (AT) (Insolvency) No.464 of 2022 fully supports the case of the appellant that Section 7 application admitted by adjudicating authority is in violation of principle of natural justice. It is submitted that the adjudicating authority has committed error in misinterpreting the scope of Rule 49(2) in holding that facts of the present case are not covered by Rule 49(2) whereas there was sufficient cause for adjudicating authority to recall the order dated 25.03.2022.

5. Learned Counsel for the Respondent No.1 refuting the submissions of the Counsel for the Appellant contends that Section 7 application was

admitted by the Adjudicating Authority on merits after returning a finding that a debt and default is proved. It is submitted that against the corporate debtor, there is a consent decree passed by the DRT where debt was acknowledged and on the basis of joint application, the consent decree was passed. Recovery certificate dated 24.07.2019 has been issued, thus, the debt against the corporate debtor is fully established and crystallised. Section 7 application was filed since there is a clear default on the part of the corporate debtor. In Section 7 application notices were issued which was duly served on the corporate debtor, neither any reply was filed nor any authorised counsel appeared on behalf of the corporate debtor. Counsel who does not have any vakalatnama appeared and stated that he has recently engaged and has not filed vakalatnama. Adjudicating Authority did not commit any error in proceeding to consider the application on merits and admitting the same. It is submitted that the present is a case where there is acknowledgment of debt by the corporate debtor and there are no grounds on which appellant can be heard questioning the debt and default. It is submitted that when the matter was heard on 31.01.2024, on observations of the court that appellant should also give the facts regarding debt and default, prayer for filing an additional affidavit was made which was allowed by the court. It is submitted that the appellant during the submission is only harping that he could not file any reply and the order dated 25.03.2022 is ex-parte. Appellant has not questioned the debt and default in its submission. Section 7 application which is pending for last two years and due to various applications CIRP could not proceed any further and despite there being multiple opportunity given to the

corporate debtor to raise the submission on merits on Section 7 application, no submission has been advanced which clearly indicate that the appellant's intention is only to delay the matter. Section 7 application is to be admitted when the Adjudicating Authority finds that there is debt and default. It is further submitted that the Adjudicating Authority rightly rejected application under Rule 49(2). Since present was not a case where notice was neither served on the corporate debtor nor corporate debtor was prevented in any manner from appearing before the Adjudicating Authority on the date fixed, the Adjudicating Authority has rightly rejected the application filed by the appellant being IA No.3470 of 2022. There is no merit in the appeal. The appeal deserves to be dismissed.

6. We have considered the submissions of the counsel for the parties and perused the record.

7. It is useful to notice Part IV of Section 7 application which was filed by the financial creditor before the Adjudicating Authority in the year 2021. Part IV of the application is as follows:-

"**Part-IV**

PARTICULARS OF FINANCIAL DEBT		
1	*TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT*	*The Corporate Debtor was granted debt of Rs. F 25,00,00,000/-(Rupees Twenty Five crores) vide offer letter 01.08.2011 and the working capital credit facility was renewed from time to time on 13.09.2012 and 22.11.2013* *The dates of Disbursement of the amount to the Corporate Debtor by the Financial Creditor as follows-*

<table>
<tr><td></td><td></td><td>
<table>
<tr><th>Date</th><th>Facility Number</th><th>Disbursement Amount</th></tr>
<tr><td>01.08.2011</td><td>CDT/ADMIN/334/2011 (working capital credit facility)</td><td>25,00,00,000</td></tr>
<tr><td>13.09.2012</td><td>CDT/ADMIN/539/2012 (Supplemental working capital credit facility)</td><td>
<table>
<tr><td>Fund Based Limit

7 Crore</td><td>Non Fund Based Limit

15 Crore</td><td>Total Limits

22 Crore</td></tr>
</table>
</td></tr>
<tr><td>22.11.2013</td><td>CDT/ADMIN/655/2013 (Renewal of working capital credit facilities)</td><td>22 Crores</td></tr>
</table>
</td></tr>
<tr><td>2</td><td>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKING FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM</td><td>That total amount of default is Rs. 48,31,28,726.42. (Rupees Forty Eight Crores Thirty One Lakhs Twenty Eight Thousand Seven Hundred and Twenty Six and Paisa Forty Two Only) till 22.09.2021

Vide Recovery Certificate No. 347/2019, on 24.07.2019, the Financial Creditor has been awarded Rs. 23,29,19,212.46/- (Rupees Twenty-Three Crore Twenty Nine Lakhs Nineteen Thousand Two Hundred Twelve and Paisa Forty Six Only) along-with interest @18% p.a. with effect from O.A. i.e., 08.10.2015 till realisation.

Copy of the Recovery Certificate No. 347/2019 in MA NO. 135/2017 in O.A. NO. 466/2015 dated 24.07.2019 is annexed herewith as <u>ANNEXURE 5</u>.

Computation of amount and days of default in tabular form is annexed herewith as <u>ANNEXURE 6</u>.</td></tr>
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8. It is admitted fact that in Section 7 application notices were issued to the corporate debtor which were served on 07.03.2022. On 25.03.2022, application under Section 7 was listed before the Adjudicating Authority. The

corporate debtor did not file any reply to the Section 7 application. On 25.03.2022 one Mr. Gunjesh Ranjan appeared and informed that he has engaged recently and he has not filed any vakalatnama. Adjudicating Authority held that notices have been issued and there being no proper response, Adjudicating Authority shall proceed to examine whether there is admitted debt and default. In paragraph 11 of the order, the Adjudicating Authority made following observations:-

> *"11. Today, when the matter was taken Mr. Gunjesh Ranjan states that he has been engaged recently, but he has not filed his Vakalatnama, and therefore, we are unable to accept any arguments on behalf of the Corporate Debtor. As such notice has gone but there is no proper response. Be that as it may, the only other aspect to consider in this case is whether there is an admitted debt and default."*

9. Adjudicating Authority proceeded to consider the application and held that the application filed by applicant is well within the time, hence, by order dated 25.03.2022, Section 7 application is admitted. Aggrieved by the said order, the appellant filed an appeal being Company Appeal (AT) (Insolvency) No.418 of 2022 which was heard on 27.04.2022. This Tribunal disposed of the appeal on 04.07.2022, following was noticed in paragraphs 4, 5 and 6:-

> *"4. Mr. Arvind Verma, Learned Sr. Counsel for the Appellant submits that the Appellant be granted liberty to file an Application under Rule 49(2) of the NCLT, Rules, 2016 wherein the Appellant shall be*

able to explain the facts and circumstances of the case. Rule 49 provides:

> *"49. Ex-parte Hearing and disposal.- (1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.*
>
> *(2) Where a petition or an application has been heard ex parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit. Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also."*

5. This Appeal was entertained by this Tribunal on 18th April, 2022 and an Interim Order was passed directing that no further steps be taken in pursuance of the Order dated 25th March, 2022. Learned

Counsel for the Respondent submits that Committee of Creditors had already been constituted. Be that as it may, Learned Sr. Counsel appearing for the Appellant has prayed liberty to withdraw the Appeal to enable him to avail remedy under Rule 49(2), we are of the view that prayer of the Appellant be allowed permitting the Appellant to file an Application under Rule 49 (2) which may be considered by the Adjudicating Authority in accordance with the law. We make it clear that we are not expressing any opinion on the merits of the Application which is to be filed by the Appellant under Section 49(2). Learned Sr. Counsel for the Appellant undertakes to file the Application within one week from today.

6. Looking to the facts of the present case, we observe that for a period of two weeks, further steps in the 'Corporate Insolvency Resolution Process' be not taken and further steps in the 'CIRP' shall be taken in accordance with the Order of the NCLT in the aforesaid application. With these observations, the Appeal is disposed of."

10. Subsequent to the order of this Tribunal dated 04.07.2022, IA No.3470 of 2022 was filed by the appellant for recall of the order dated 25.03.2022.

11. In the application IA No.3470 of 2022, appellant has prayed for recall and set aside the order dated 25.03.2022. Following prayers were made in the application:-

"a) Allow the present application;

b) Recall and set-aside the order dated 25.03.2022 i.e., the order for initiation of Corporate Insolvency Resolution Process be set aside.

c) Pass any other necessary orders or directions as may deem fit in the present matter."

12. As noted above, by order dated 04.07.2022 disposing of Company Appeal (AT) (Insolvency) No.418 of 2022, interim protection was granted for a period of two weeks. Appellant filed an application praying for further interim relief in which notices were issued on 01.08.2022 which order was also challenged in this Tribunal. This Tribunal on 10.08.2022 disposed of Company Appeal (AT) (Insolvency) No.934 & 935 of 2022, which reads as follows:-

*"**10.08.2022:** Heard Learned Counsel for the Appellant as well as Learned Counsel appearing for the Respondent/ DBS Bank India Ltd. This appeal has been filed against the order of the Hon'ble NCLT Principal Bench, Delhi dated 01.08.2022 passed in I.A. No. 3630 of 2022 as well as the order dated 27.07.2022 passed in I.A. No. 3470/2022. In this appeal few facts are necessary to be noticed. By the order dated 25.03.2022 application under section 7 was admitted against which an appeal was filed by the appellant in this 'Tribunal', in which appeal order was passed on 04.07.2022, giving liberty to the Appellant to file an application under Rule 49(2) of the NCLT, Rules, 2016 for recall of the ex-parte order.*

This 'Tribunal' also granted interim order for a period of two weeks. Subsequently, an another I.A. No. 2239 of 2022 was filed in Comp. App. (AT) (Ins.) No. 418 of 2022 which application was dismissed as withdrawn with liberty to the Appellant to file an application, as per order dated 04.07.2022 interim protection was extended for a period of one week. The application under Rule 49(2) was filed by the Appellant on 19.07.2022 on which notice was issued 22.07.2022 and the matter was there after taken on 27.07.2022 fixing the application 3470/2022 for 12.09.2022. Appellant filed an application for interim relief being I.A. No. 3630/ 2022 which is also been permitted to be listed on 12.09.2022, the application was filed on 28.07.2022.

Learned Counsel for the Appellant submits that the application for recall of the order admitting CIRP is still pending and has been fixed for 12.09.2022, Adjudicating Authority ought to have passed an order on the interim application 3630/2022 grating some protection which have been simply listed on the 12.09.2022 when main application was to come.

Both the applications i.e. 3470/2022 and 3630/2022 are still pending before the Adjudicating Authority, we see no reason to entertain this appeal.

We have been informed by the Counsel for the Respondent that CoC has already been constituted. Both the applications being pending before the Adjudicating Authority, we are of the

view that Adjudicating Authority shall endeavour to dispose of the application on the next date i.e. 12.09.2022 or as early as possible.

However, looking to the facts of the present case we are of the view that that till both the applications are pending consideration CoC shall not take any further steps in the CIRP. IRP shall ensure that Corporate Debtor is run as a going concern.

Appeal disposed of."

13. The Adjudicating Authority by the impugned order has dismissed the IA No.3470 of 2022. Adjudicating Authority while dismissing the application took the view that application filed by the appellant is not covered by Rule 49(2), held that decision in Section 7 application was taken on merits. Adjudicating Authority in the impugned order has made following observations rejecting the application with regard to Rule 49(2).

"As has been analysed hereinabove, the Rule 49(2) can be resorted to by us only when there is no service of notice upon the Respondent or the Respondent does not appear in the matter on being prevented by sufficient cause. In a case where the Respondent in the petition was represented by the Ld. Counsel, who stated that he had been engaged recently and had not filed his power cannot be ground for us to recall the detailed order dated 25.03.2022 passed on merits. In view of the aforementioned, finding the present application not covered by the provisions of Section 49(2), we reject the same."

14. The submission which has been pressed by the Counsel for the appellant that the Adjudicating Authority has not correctly construed Rule 49(2). Rule 49(2) of the NCLT Rules, 2016 provides as follows:-

> *"**49. Ex-parte Hearing and disposal.-** (1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.*
>
> *(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit.*
>
> *Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also."*

15. When we look into Rule 49(2), it is clear that where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing. As far as service of notice is concerned, it is an admitted fact that the notice was served on the appellant on 07.03.2022 which has not been denied nor the application was filed on the ground that notice was not served. The second ground on which order can be recalled is where he or they were prevented by any sufficient cause from appearing. Present is not a case where it can be said that the corporate debtor was prevented by any sufficient cause from appearing. Notice has been issued which was duly served. No cause is being showed by the appellant that they were prevented from appearing. Counsel appearing before the Adjudicating Authority and saying that he has recently engaged and has not filed the vakalatnama cannot be said that the corporate debtor was prevented by any sufficient cause from appearing. Corporate debtor has to blame himself for not appointing an Advocate to appear and make appropriate pleading before the Court. It is not a case advocate who appeared submitted that he shall file vakalatnama during the course of the day. Adjudicating Authority made further observations with regard to cause pressed by the appellant for recall of the order:-

> *"A careful perusal of Rule 49(2) reveals that this Tribunal can set aside an order being ex-parte, only*

when the Respondent/Respondents satisfy the Tribunal that the notice was not duly served on the Respondents or they were prevented by any sufficient cause from appearing in the matter. In the present case indubitably notice was served upon the CD on 07.03.2022 and Mr. Gunjesh Ranjan, Ld. Counsel entered appearance on it's behalf before the Tribunal to espouse that he had not yet filed his power. So the present case is not a case where either the notice was not served upon the CD or there was any sufficient or justified/plausible cause preventing the CD/Applicant in present IA from appearing before this Adjudicating Authority. We are afraid that beyond these two causes viz. non-service of notice upon Respondent or it being prevented from appearing before the Tribunal on account of sufficient cause, any other ground is available before this Tribunal to set aside an order passed by it. Moreover, the order dated 25.03.2022 nowhere indicates that the order is ex-parte. The only view taken in para 11 of the order was that despite service of notice upon the CD, there was no proper response. Thus, there being neither a case of absence of service of notice nor that of non- appearance of Respondent on account of some sufficient cause which normally should be the one beyond the control of the CD/Respondent and the aspect looked into by this Tribunal being only non-availability of proper response, we cannot exercise the power under Rule 49 of the NCLT Rules. The Rule 49(2) nowhere provides that even in such cases where the Ld. Counsel represent the Respondent without having

any power and does not give any proper response, the order passed in the absence of proper response by the Ld. Counsel who represent the CD/Respondent need to be recalled as ex- parte order."

16. Rule 49 gives ample jurisdiction to the Adjudicating Authority to proceed for *ex parte* as corporate debtor does not appear. "Appearance" as contemplated under Rule 49(1) is appearance by the corporate debtor or by an authorised representative.

17. Counsel for the appellant has placed much reliance on the judgment of this Tribunal in Company Appeal (AT) (Insolvency) No.464 of 2022 decided on 14.07.2022 which was an appeal filed by Suspended Director of M/s. Abhisar Impex Private Limited, the corporate guarantor of the corporate debtor. It is submitted that in the case of corporate guarantor on date fixed i.e. 29.03.2022 the corporate debtor appeared through a counsel and made a request to grant time to file reply which request was refused and the Adjudicating Authority by order of the same day i.e. 29.03.2022 admitted Section 7 application. This Tribunal in the said appeal took the view that the Adjudicating Authority committed error in refusing to grant opportunity on very first day of hearing when request was made on behalf of the corporate debtor. It was held that rejecting the request of the corporate debtor on the very first day for grant of time to file a reply cannot be said to be in consonance with the principles of natural justice. In paragraph 12 of the judgment, following has been observed:-

> *"12. The procedure, which is to be adopted by the Tribunal has to be in consonance with the rules of natural justice and equity as required by the rules itself. Unless, it is held that due to non-filing of the reply before the date of hearing by the Corporate Debtor, the Adjudicating Authority is obliged to decide the application under Section 7, the Adjudicating Authority has ample jurisdiction to consider any request for reasonable time by a Corporate Debtor for filing a reply. The Tribunal is fully entitled to grant time for filing a reply asked for by the Corporate Debtor on the first date of hearing. Rejecting the request of the Corporate Debtor on the very first day for grant of time to file a reply, cannot be said to be in consonance with the principles of natural justice. There can be no dispute that in appropriate case, if the Adjudicating Authority is satisfied that the Corporate Debtor is deliberately delaying the matter, the request for grant of any further time to file a reply can be refused. But present is not a case where it can be said that Corporate Debtor was delaying the disposal of the case, since 29.03.2022 was the first date of hearing as indicated in the notice served on the Corporate Debtor on 07.03.2022."*

18. The above case filed against the corporate guarantor was a case wherein on the first date of hearing advocate appeared and prayed for time to file a reply which was denied without there being any justified reason. In the above background, this Tribunal held that refusing to grant time was not in consonance with the principles of natural justice and hence, the order was

set aside. This Tribunal by order dated 14.07.2022 set aside the order dated 29.03.2022 and revived Section 7 application to be heard in accordance with law. It is submitted that after the order dated 14.07.2022, Section 7 application filed against the corporate guarantor has also been admitted against which Company Appeal (AT) (Insolvency) No. 343 of 2024 has already been filed by the appellant which is pending consideration.

19. In the present appeal, the appellant has prayed for following reliefs:-

> *"a) Allow the present appeal;*
>
> *b) Set aside the impugned order dated 15.1.2024 of the Hon'ble NCLT, New Delhi Bench (Court-II) passed in I.A No.3470/2022 and grant ad-interim ex-parte stay on further CIR proceedings arising out of the order dated 25.3.2022;*
>
> *c) Pass any such orders as the Hon'ble Appellate Tribunal may deem fit."*

20. It is relevant to notice that this Tribunal on 21.01.2024 has granted time to the appellant to file an additional affidavit and Additional affidavit has been filed by the appellant bringing on record various materials pertaining to debt and sequence of the events with regard to restructuring of the debt and default by the corporate debtor and various proceedings taken therein.

21. Counsel for the financial creditor has also submitted that present is a case where debt and default is not even questioned since there is a consent decree passed by the DRT against the corporate debtor, hence, the appellant

in this appeal is not making any submission on merits of the appeal although time was taken by the appellant on 31.01.2024 to file an additional affidavit so as to address the appeal on merits. We have noticed that during the oral submissions challenging the order rejecting the application under Rule 49(2), no submission has been advanced by the appellant on debt and default. In the facts of the present case and submission of the counsel for the parties, we are of the view that present is not a case where this Tribunal may interfere with the impugned order in exercise of our appellate jurisdiction. There is no merit in the appeal. The appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali