

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 432 of 2025

[Arising out of the Order dated January 16, 2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench, Court-III) in I.A. No. 2021/2022 in CP (IB) No.643(ND)/2018]

IN THE MATTER OF:

1. **Sh. Ashish Chaturvedi**

S/o. Late Shri V.K. Chaturvedi
Aged about 46 years
R/o House No. MS-8/302,
Kendriya Vihar, Sector-56,
Gurgaon-122001, Haryana,
Presently at New Delhi

...Appellant No.1

2. **Sh. Sanjay Kapoor**

S/o Shri Bal Krishan Kapoor
Age About 62 Years
R/o M.No.18, Savita Vihar,
Shakarpur, Baramad, Shakarpur,
East Delhi, Delhi-110092

...Appellant No.2

Versus

1. **Sh. Sanjay Garg**

Liquidator of M/s A to Z Barter Private Limited
IP REG. NO.: IBBI/IPA-001/IP-P-01865/2019-
2020/12919
REGD. ADD: 109 (First Floor),
Surya Kiran Building, 19,
KG Marg, Barakhamba Road,
New Delhi 110001

...Respondent

With

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...Respondent

Present:

For Appellant : Mr. Pulkit Atal, Advocate.

For Respondent : Mr. K.D. Sharma, Liquidator.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The Appellants-Suspended Directors of A to Z Barter Pvt Ltd, have challenged the Order dated 16.01.2025 passed by the National Company Law Tribunal, New Delhi (Adjudicating Authority-AA) in I.A. No. 2021/2022 in CP (IB) No.643(ND)/2018]. The Impugned Order directed the Appellants to deposit ₹ 37,64,953/- (including interest on ₹ 32,00,000/-) into the Liquidation Estate of the Corporate Debtor. The amount was allegedly withdrawn during the moratorium period under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). The Appellants contend that the withdrawal was the result of the encashment of post-dated cheques issued to Kewal Kisan, prior to the initiation of the CIRP. They argue that the

transaction was cheque-based and not through electronic transfer (NEFT/IMPS), and that the post-CIRP, presentation of the cheques was not their fault. Accordingly, they seek to set aside the Impugned Order through the present Appeal.

Brief facts

2. It is claimed by the Appellant that the Impugned Order dated 16.01.2025 is silent upon the ground taken by the present Appellant on the contention of the Respondent Liquidator regarding illegally withdrawing an amount of ₹ 32,00,000/- from the Corporate Bank account while the said Corporate Debtor was under CIRP and Section 14 of the IBC was imposed upon the same. The AA failed to appreciate that the Appellant had issued post-dated cheque to Kewal Kisan for repayment of loan. If we scrutinise the bank statement, which was annexed with the Application vide IA No. 2025 of 2020 filed by the Ex-Interim Resolution Professional, we can see that it's a transaction through cheque and not a transfer through NEFT. The cheque was given earlier as a post-dated cheque to repay the due loan amount. The Appellant never used that money for his personal purpose. The AA has overlooked the legal issues that the money was neither an NEFT transaction nor a cash withdrawal but it was repaid through post-dated cheques to repay an old loan amount on behalf of the Company. The AA has wrongly relied on the version of pleadings of the Respondent Liquidator.

3. The Appellant contends that AA has failed to appreciate that, after passing of the Order/Judgment dated 14.02.2022, of this Appellate Tribunal in Company Appeal (AT) (Ins) 1103 of 2020, IA 1253/2020 ought to have

been heard afresh after giving due opportunity to the Appellant to present his case. However, the Respondent Liquidator, with delay tactics and an intention to prolong the liquidation period of the Corporate Debtor for an indefinite period, recklessly filed another round of litigation through IA 2021 of 2022 with no objective other than again accusing the Appellant/ex-directors of the Corporate Debtor of non-cooperation despite the fact that the liquidation period had already been extended on multiple instances. In IA 2021 of 2022, the operative part of the Judgment/Direction passed on 14.02.2022 by this Appellate Tribunal in Company Appeal (AT) (Ins) No. 1103/2020, i.e., "*directions to the Adjudicating Authority to hear afresh the IA 1253 of 2020*", was concealed and, subsequently, the same was also not reflected in the Impugned Order dated 12.03.2024 passed by the AA, which was a gross misconduct on behalf of the Respondent Liquidator, and against which appropriate proceedings must be initiated to safeguard the purpose of the liquidation element of the IBC.

4. The Appellant prays to set aside the impugned Order dated 16.01.2025 passed by the NCLT, New Delhi Bench in (IB)-643(ND)/2018 whereby the application IA No. 2021 of 2022 filed by Respondent Liquidator was allowed and Mr. Ashish Chaturvedi and another suspended Director Mr. Sanjay Kapoor, of the Corporate Debtor were directed to deposit ₹ 37,64,953/- (Rupees Thirty-Seven Lakh Sixty-Four Thousand Nine Hundred Fifty-Three) including interest accrued on the actual amount of ₹ 32,00,000/- to make it a part of Liquidation estate of the Corporate Debtor.

5. The Respondent-Liquidator claims that the Appellants in both the Appeals are hit by the Doctrine of Res Judicata. It was in this context that IA 2021/2022 was preferred by the Liquidator.

6. At this juncture, it is pertinent to submit that CA 1253/2020 was preferred during the CIRP stage. The purpose of filing IA 2021/2022 was to bring to the knowledge of the AA, the fact of continuing non-cooperation of the Appellants as well as the brazen disobedience of the Appellants vis-à-vis Orders passed by the AA and this Appellate Authority qua wrongful utilisation of ₹ 32 lakhs during the CIRP moratorium. The IA 2021/2022 was heard and was decided by the Impugned Order dated 16.01.2025. The Appellants had shown non-cooperation during the CIRP and during the liquidation process, and the same is continuing as on date. The Appellants-Suspended Directors in both the Appeals shown abject non-cooperation during the CIRP and liquidation process. The Respondent-Liquidator claims that none of the documents as required by the Liquidator/Respondent have been provided by the Appellants hitherto.

7. Vide Order dated 09.11.2021 of the AA in the Application [IA 2025/2020], filed by the Resolution Professional under Section 60 (5), read with Section 66 of the Code, the suspended directors of the Corporate Debtor (Appellants) were directed to deposit a sum of ₹ 32 lakhs along with interest @12% per annum from the date of withdrawal.

8. Thereafter, the suspended board of directors had preferred an Appeal [CA (AT) (Ins) No. 47/2021] before this Appellate Authority. However, the said Appeal was dismissed as withdrawn vide Order dated 29.01.2021 of the Appellate Authority.

9. As the Corporate Debtor had no money to its credit as on the liquidation commencement date because of the malicious acts of the Respondents, the Respondent-Liquidator was unable to pay fees either to himself or to the service providers appointed by him.

10. The only plea that has been taken by the Appellants to rebut the allegation of abject non-cooperation is illness of the Appellants, which cannot be held tenable in law.

11. Copies of the Impugned Orders were served to the Appellants (also through the Counsel) for necessary compliances via emails dated 17.01.2025, and other reminder emails. Also, the Orders were served to the Appellants via letters dated 06.02.2025. However, the Orders were disobeyed by the Appellants. The Respondent has filed Contempt Petition No. 10 of 2025 against the Appellants for they have knowingly disobeyed the Orders of the AA as well as Orders/Judgments of this Appellate Authority. The Contempt Petition was called for hearing on 18.03.2025 and the AA was pleased to issue notice. In view of the submissions made hereinabove, the Appeals are liable to be dismissed, being devoid of merit.

12. It is also pointed out by the Respondent-Liquidator that the Appellants-Suspended Directors have not been cooperating with the Liquidator and not paid the penalty also and the CD has been recommended for dissolution. This matter was heard by NCLT by the order dated 09.11.2021 and also the Appeal before this Tribunal on 14.02.2022 and opportunity has been given to the Appellants, so the present appeal is hit by res-judicata. In case it was not hit by res-judicata, even then we won't have been able to decide it on merits basis the grounds raised by the Appellant. The Appellants and claimed that these were post-dated cheques issued to one Mr Kewal Kishan for repayment of loan and which were issued before the initiation of CIRP of the CD, but the same were presented after the initiation of the CIRP. Therefore, the fault was not of the present Appellant. This argument does not cut much wise and is not tenable as the Appellant could have very well instructed Mr Keval Kishan not to present those cheques as moratorium had kicked in.

Appraisal:

13. We have heard the submissions of Ld. Counsel appearing for the Appellant as well as Ld. Counsel appearing for the Respondents and also perused the materials placed on record. Since the Impugned Order and facts of CA (AT) (Ins.) Nos. 432 and 433 of 2025 are the same, we have taken both the Appeals them together.

14. It is a matter of record that the CIRP of the Corporate Debtor was initiated by an order dated 05.12.2018, passed by the Adjudicating Authority.

Consequently, Mr. Anoop Kumar Goyal was appointed as the Interim Resolution Professional and was subsequently confirmed as the Resolution Professional of the Corporate Debtor.

15. The Liquidation process was initiated by an order dated 04.01.2021, issued in IA-5415-2020 by this Adjudicating Authority, appointing Mr. Sanjay Garg as the Liquidator of the Corporate Debtor.

16. In IA No 1253 of 2020, the resolution professional had sought directions under Section 19(2) for the suspended board of directors for providing the record and other information of the Corporate Debtor. After hearing in detail, the adjudicating authority, on 9/11/2020 ordered that both directors of the CD namely Ashish Chaturvedi and Sanjay Kapoor have grossly violated the provisions of Section 128(5) of the Companies Act 2013, for which the punishment is provided under Section 128(6) of Companies Act 2013. Invoking the provisions under Section 128(6) of the Company Act 2013, the adjudicating authority imposed a penalty of ₹ 5,00,000 on each namely Mr Ashish Chaturvedi and Mr Sanjay Kapoor.

17. Further in an Application No I.A.2025/2020 of the Resolution Professional under Section 60(5) read with Section 66 of the Code Adjudicating Authority on 09th November 2021 noted that several opportunities were given to the Respondent to file reply as to whether the money i.e. ₹ 32 lakhs have been withdrawn from the account of the Corporate Debtor. However, no reply was placed on record by the Appellants herein.

Accordingly, the AA directed the suspended Directors of the Corporate Debtor (Respondents herein) to deposit a sum of ₹ 32 lakh along with interest @12% per annum from the date of withdrawal. For better appreciation the relevant portion of the order of Adjudicating Authority is extracted below:

"IA 2025/2020

Counsel for the Resolution Professional is present. Counsel for the Respondents is present. As seen from the previous order dated le. 13.09.2020, 19.10.2020 and 02.11.2020, the opportunities were given to the respondent to file reply and affidavit to the effect as to whether the money Le. Rs. 32 lakhs has been withdrawn from the account of the Corporate Debtor viz., M/s. A to Z Barter Private Limited, maintained at HDFC Bank, Branch Mayapuri. However, no reply has been filed nor any affidavit is placed on record by the Respondents.

It is submitted by the counsel for the Resolution Professional that CIR Process was initiated on 10.12.2019 and the IRP has taken the charge of CD and during the moratorium declared under Section 14 of the IBC, on 20.12.2019, an amount of Rs. 16.50 lakhs and Rs. 10 lakhs was withdrawn by the Respondents through the Authorized signatories of the CD and again on 13.02.2019, an amount of Rs. 5.50 lakhs was withdrawn which is in violation of the provisions of section 14 of the CIRP and in spite of the present application for depositing the amount withdrawn to the accounts of the CD, the respondents have not bothered to deposit an amount of Rs. 32 lakhs approximately.

In view of the facts and circumstances stated in the Application and the arguments advanced on behalf of the Resolution Professional and the Respondents, we hereby direct the respondents to deposit an amount of Rs.32 lakhs along with interest 12% per annum from the date of the withdrawal and deposit the total amount to the accounts of the Corporate Debtor being maintained by the Resolution Professional within a period of 21 days from the date of this order and an affidavit of compliance shall be filed by the Respondent(s) in the Registry. In terms of the above, the IA stands disposed of."

[emphasis supplied]

18. The suspended board of Directors preferred an appeal [CA(AT) (Insolvency) No. 47/2021] before this Appellate Authority. This Appellate

Tribunal on 29.01.2021 heard the matter and noted that as per the order dated 9th November 2020, the Appellant i.e. the erstwhile director of the corporate debtor was directed to deposit the total amount of ₹ 32,00,000 along with interest at the rate of 12% p.a. from the date of withdrawal, which was in violation of the provisions of Section 14 of the Code. It was noted that no cogent legal grounds assailing the impugned order and justifying the retention of the amount withdrawn in utter violation of the order passed under Section 14 of the Code during the CIRP has been assigned. Faced with this situation the learned Counsel for the Appellant had offered to withdraw the appeal and accordingly the appeal was dismissed as withdrawn vide order dated 29th January 2021 by this Appellate Tribunal.

19. In the meantime, on 14 February 2022, in the Company Appeal (AT) (Insolvency) No. 1103 of 2020, under Section 61 of the Code, assailing the order dated 09.11.2020, this Appellate Tribunal in its orders agreed with the findings of the Adjudicating Authority with respect to deposit of ₹ 32,00,000 with the Corporate Debtor. But with respect to the imposition of penalty on the suspended directors, the matter was remanded back to decide the matter afresh after giving the opportunity of hearing to the appellants. The Judgment (*supra*) had recorded the following observations:

“9. Paragraph 6 of this judgment provide ample indication about the non- cooperation of the Appellants in providing requisite documents and records pertaining to the functioning of the corporate debtor which were requested by the erstwhile resolution professional, and later by the liquidator. Therefore, the resolution professional could not carry out his duties as required under the IBC for insolvency resolution of the corporate debtor and when the corporate debtor was sent into liquidation, the liquidator was

unable to carry out the liquidation process in accordance with the provisions of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Moreover, when the Adjudicating Authority provided multiple opportunities to the Appellants to clarify their position by filing their replies in IA 1253/2020 the Appellants were totally remiss in doing so.”

...

“11. In compliance of this order, the liquidator sent communication to the erstwhile Directors to deposit the said amount of Rs. 32 lakhs along with interest, which was also not complied with. Thus, the Appellants have not only not provided the records and financial documents relating to the corporate debtor to the erstwhile resolution professional and the liquidator despite being requested to do so many times, but they have also not complied with the Adjudicating Authority’s orders given on 09.11.2020. Such acts of total carelessness in complying with the requirements of law, amounting to defiance and disrespect of the legal process, cannot be condoned and needs to be dealt with strictly in accordance with the provisions of Chapter VII titled “OFFENCES AND PENALTIES” of the IBC.”

[emphasis supplied]

20. We find that while deciding Company Appeal (AT) (Insolvency) No. 1103 of 2020, this Appellate Authority, through its judgment dated 14.02.2022, had adverted to all the contentions of both the parties and recorded specific findings therein. The contents of these Appeals have already been adjudicated upon by this Appellate Authority. We had remanded CA 1253/2020 to the AA for fresh hearing with respect to the penalty of ₹ 5,00,000 to be imposed as per the provisions and of the code- the relevant extract are as follows:

“12. With regard to the argument of the Learned Counsel of the Appellants that the Adjudicating Authority has imposed the penalty on the two ex-directors by invoking provisions of the Companies Act, 2013, and thus passed the Impugned Order by travelling beyond their jurisdiction, we are of the view that since the IA No. 1253/2020 was filed under the provisions of IBC, it would have served the requirement of law if any order regarding the penalty was imposed under the provisions of IBC. Moreover, it would have served the cause of natural justice if the Appellants were given an opportunity to be heard before imposition of any penalty. Chapter

VII of the IBC which lays down “Offences and Penalties” under which officers of the Corporate Debtor can be penalized and/or punished with imprisonment is relevant in this regard.

13. In the light of the above, we direct that the case be remanded to the Adjudicating Authority for taking a decision under the provisions of IBC after giving an opportunity to the Appellants to present their case and giving due consideration of the facts of the case in IA 1253/2020. With these directions, we set aside the Impugned Order whereby penalty of Rs. 5 lakhs each on the Appellants has been imposed and remand the matter to the Adjudicating Authority for passing necessary orders under the provisions of IBC.”

[emphasis supplied]

21. The said CA 1253/2020 was heard accordingly by the AA, and was decided by the Impugned Order dated 16.01.2025. The Appellant has Once again through this Appeal in Company Appeal (AT) (Insolvency) No. 432 and 433 of 2025 challenged the recovery of ₹ 32,00,000 with interest. This was not appreciated by this Appellate tribunal in its order dated 14th February 2022. The orders dated 09.11.2021, with respect to deposit of ₹ 32 lakhs. By agitating it again and again the Appellant is wasting the time of the Adjudicating Authority as well as the Appellate Authority. The Appellant is hit very hard by res judicata with respect to raising the appeal to deposit of ₹32,00,000. The matter has been well settled by the Adjudicating Authority and we do not find any infirmity in the order.

22. We note that CA 1253/2020 was preferred during the CIRP stage. Through the filing of IA 2021/2022 by the liquidator the fact of continuing non-cooperation of the Appellants as well as the brazen disobedience of the Appellants vis-à-vis Orders passed by the AA and this Appellate Authority qua wrongful utilisation of ₹ 32 lakhs during the CIRP moratorium are once again

reinforced. The IA 2021/2022 was heard and was decided by the Impugned Order dated 16.01.2025. We find that the Appellants had shown continued non-cooperation during the CIRP and during the liquidation process, and the same is continuing as on date.

23. In summary we find that the Appellants have defied the:

- Orders dated 09.11.2021 of the AA in IA No. 2025/2020 which contained directions to deposit a sum of ₹ 32 lakhs along with interest @12% p.a.
- Order dated 29.01.2021 of this Appellate Authority in Company Appeal (AT) (Ins) No. 47/2021 which was dismissed as withdrawn. We note that with the withdrawal of this Appeal, the Order of the AA dated 09.11.2021 of the AA in IA No. 2025/2020 had attained finality.
- The Judgment dated 14.02.2022 of this Appellate Authority in CA (AT) (Ins) No. 1103/2020 wherein the operative part of orders relates only relate to costs/penalty to be heard afresh by AA.

And still the said amount, along with interest, has not been paid by the Appellants hitherto -which order had attained finality and is hit by res-judicata and is being agitated again and again.

24. In the above facts and circumstances, we note that the order dated 9th November 2021 has not been challenged before the Appellate Authority and has thus attained finality. Thus we do not find any infirmity in the orders of the Adjudicating Authority in allowing IA No 2021 of 2022 which prays to direct the suspended Directors to deposit to the account of the Corporate Debtor an amount of ₹ 32 lakhs along with interest at the rate of 12% per annum from the date of withdrawal, in compliance of orders dated 9th

November 2020 of the AA in IA number 2025 of 2020 and 29th January 2021 of this appellate tribunal in CA (AT) (Ins.) No. 47 of 2021.

Orders

25. Accordingly, we dismiss the appeal of the suspended directors as it is devoid of any merits. Further we find this to be frivolous and vexatious litigation and has wasted lot of time of the Court in avoidable litigation. We note that the Appellants-Suspended Directors in both the Appeals have shown abject non-cooperation during the CIRP and thereafter liquidation process. We note that even now, none of the documents as required by the Liquidator/Respondent have been provided by the Appellants hitherto and also not deposited back ₹ 32 lakhs with interest as ordered by the AA. Therefore, we are inclined to impose cost of ₹ 5 lakh on each of the Directors and order accordingly to be deposited in PM's Relief Fund, apart from the amount to be deposited as per the orders of the Adjudicating Authority.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
April 23, 2025.**
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