NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 28 / 2023
(IA Nos. 94 & 96 / 2023)

In the matter of:

Mr. Narappa Manohar Reddy,
Shareholder and Erstwhile Director of
M/s. Sagar Power (Neerukatte) Private Limited
No. 164, Phase I, Adarsha Palm Meadows,
Ramagondanahalli, Bangalore – 560066 **…. Appellant No. 1**

Mrs. Narappa Sharada Reddy
Shareholder and Erstwhile Director of
M/s. Sagar Power (Neerukatte) Private Limited
No. 164, Phase I, Adarsha Palm Meadows,
Ramagondanahalli, Bangalore – 560066 **…. Appellant No. 2**

M/s. New Age Infrastructure Private Limited
Shareholder of M/s. Sagar Power (Neerukatte)
Private Limited
312, 3rd Floor, Royal Corner,
K.H. Road, Bangalore – 560053 **…. Appellant No. 3**

V

Mr. Pankaj Srivastava,
Liquidator of M/s. Sagar Power (Neerukatte)
Private Limited
IP Registration No. IBBI/IPA-001/
IP-P00245/2017-2018/10474
5, 5th Cross, Navya Nagar, Jakkur,
Bangalore – 560064 **…. Respondent**

Present :

For Appellants : Mr. Chandramouli Prabhakar, Advocate
For Respondent : Mr. Abhishek Anand & Mr. Karan Kohli, Advocates

O R D E R
(Hybrid Mode)

17.11.2025:

Oral Judgment : Justice Sharad Kumar Sharma, Member (Judicial):

1. The Appellants herein are aggrieved by the impugned order of 30.11.2022 that, has been passed by the Ld. NCLT, Bengaluru Bench in IA No. 499 / 2020, which was preferred in CP (IB) No. 243 / BB / 2018.

2. The consequential effect of the same had been that, the application preferred by the Respondent, under Section 43 of I & B Code, 2016, has been alleged to be erroneously allowed and consequentially it has resulted into issuing a direction against the Appellants herein, to respectively restore certain amount, as referred to in the operative portion of the impugned order, determined to be payable by each of the Appellants.

3. The Ld. Counsel for the Appellant has pressed upon the Appeal on a very limited conspicuous, submitting that though they had filed their counter affidavit prior to the date on which the Company Appeal was being heard by the Ld. Tribunal, but the counsel who was suppose to represent the cause of the Appellant was not present on the said date, owing to the fact that because of Covid-19 situation initially she was engaged in an independent practice and thereafter she has quit the same and has joined the Law Firm, due to which, on the date when the effective hearing of the Company Petition was held by the Ld. Tribunal, the Appellants were not heard, as they remained unrepresented.

4. We called upon the Respondent Counsel to answer the exclusive ground taken by the Appellant in the instant Company Appeal.

5. The Ld. Counsel for the Respondent has drawn the attention of this Tribunal to the contents of Para 13 & 14 of the impugned order to object the argument extended by the Ld. Counsel for the Appellants contending thereof that, as a matter of fact, the Appellants were heard, on the aspect of delay, as well as they were also heard before the Auditor.

6. In fact, hearing of the Appellant at the stage of submission of the transaction Audit Report or even at the stage when the Auditors were supposed to submit their Audit Report in itself would not be taken to be sufficient and effective hearing to have been provided to the Appellants for the reason being that, when an adjudication is being taken upon on the basis of the transaction reflected in Audit Report for the purposes of determining the aspect of preferential transaction under Section 43 of I & B Code, 2016, the Appellants who had already submitted his pleading by filing the counter before the Ld. Tribunal were supposed to be represented by their counsel, and be heard and addressed by the counsel on the merits of the application, or even in response to the arguments raised by the Applicant to the application under Section 43 of I & B Code, 2016.

7. However, the Counsel's inability to appear on date of hearing as already expressed above, was owing to counsel's personal inconvenience and the same

cannot be attributed to the Appellants, and thus under the settled principles of cannot be attributed to the Appellants above and under the certain principles of audi alteram partem, no party to the proceedings can be condemned unheard.

8. The governing principles of audi altarem partem is basically envisage that the fundamental rule of natural justice is to be followed to ensure to enable a party to the proceedings to effectively represent its cause in order to attach a fairness to the proceedings between the parties which is the basic element which is required to be considered and ensure before determining the right or liabilities to the party to the proceedings.

9. It has been settled that the functions of the Tribunal or the Authority they are a mixture of both administrative and quasi judicial functions and only a fair opportunity to be heard is need to be given in order to ensure that none of the parties to the proceedings may have the grievance that they were not provided ample of opportunity by the Tribunal or the Court to prove or establish their case.

10. The exercise of quasi judicial functions and doctrine of natural justice has had to be observed and complied with by the Tribunal(s) even if there is no procedure prescribed or as such laid down under the Statute. The duty to give an opportunity to the affected persons who represent his case necessarily involves a duty to give notice to the Applicant or to the Pleader who represents a litigant.

11. Based upon the aforesaid principles, initially I & B Code, 2016, had not included within itself any procedure except for the procedure that was prescribed under Section 424 of the Companies Act, 2013.

Under section 424 of the Companies Act, the guiding principle is that, though the Tribunal(s), as constituted under the Companies Act they are basically to be governed by the principles of nature justice, subject to the provisions and principles of the Code of Civil Procedure. But, however, all the proceedings which are governed by the provisions contained under the I & B Code, 2016, the principles of natural justice and its application are the guiding factors, as it has been envisaged under the Code of Civil Procedure, had been made applicable to invariably, on all the proceedings as covered under the I & B Code, 2016, owing to the subsequent insertion made by Act No. 31 of 2016, whereby under the provisions contained under Section 424, the proceedings under the I & B Code, 2016, had been incorporated to be included and made as part and parcel of an embodied provision of Section 424 of the Companies Act. Meaning thereby, the Tribunal(s) are required to ensure that a person is not deprived of his opportunity to be heard.

In the case at hand, the Appellants did file their objection when the matter was being taken up, in context of the proceedings under Section 43, but, what is more important is that in accordance with the finding recorded by the Ld.

Tribunal at the time when the Petition was being heard finally, the Appellants were not represented by any counsel.

12. Even in those eventualities where the counsel is not representing at the stage of hearing though the pleadings are already on record then too, it becomes more responsibility of the Tribunal, that the Tribunal(s), should have at least referred to the pleadings raised by the parties, whose counsel, is not representing his cause when the matter was taken up, should have given reason to accept or not to accept the same, the aforesaid principle has been laid down in the **Judgment reported in 2003 Vol 7 SCC 350 Ramesh Chand Ardawatiya V. Anil Panjwani** and particularly the principles has been contained in Para 33 of the said Judgment which is extracted hereunder:

> *``33. So far as the plea of bar as to maintainability of suit for failure to seek further relief is concerned, we cannot find fault with the plaint as framed. The defendant was alleged to be a rank trespasser who was in the process of committing a trespass and was allegedly raising unauthorized construction over the property neither owned nor legally possessed by him. The relief of specific performance is not a further relief to which the plaintiff is entitled or which he could have sought for against this defendant. Thus, from the point of view of the present defendant, we cannot find any such defect or infirmity in the relief sought for by the plaintiff as would render the suit not maintainable and liable to be thrown out at the threshold. But there is substance in the other limb of this submission made by the learned Senior Counsel for the defendant-appellant.* ***Even if the suit proceeds ex parte and in the absence of a written statement, unless the applicability of Order 8 Rule 10 CPC is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with. In the***

absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. *In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.''*

13. If we consider the findings those has been recorded by the Tribunal, the pleading raised by the Appellants in their objection, was not even adverted to, of either to accept or not to accept the ground of defence taken by the Appellants to the proceedings under Section 43 of I & B Code, 2016, that itself would vitiate the proceedings.

14. There is yet another procedural flaw that in light of the provisions contained under Order VIII Rule 10 of CPC, the principles of which has been made applicable under the provisions contained to be made applicable under Section 424 of the Companies Act, if a counsel was not appearing on a particular date when the Petition was being heard finally, it was necessary for the Tribunal that the proceedings should have been first directed to be set ex parte as against the Appellants.

15. There is nothing on record to show that at any point of time the Tribunal took cognisance of the said aspect and had directed in the Company Petition, to set the proceedings ex parte as against the present Appellant, not directing the proceedings to be set ex parte against the Appellant itself will be in violation to the provisions contained under Order VIII of C.P.C., which prescribes for, that if the counsel is not appearing on a particular date, the Tribunal is not supposed to proceed to hear the matter on its merit rather it was bound to fix a date for ex parte hearing, after passing of an order to proceed ex parte, that was not the case at hand, which would vitiate the proceedings.

16. There could be yet another aspect, which is required to be considered which is apparent and not disputed too by the other side that, on the date of hearing, the counsel for the Appellant was not appearing and that too, without any prior notice to the Appellant by their Counsel about the counsel's inability to appear and defend his cause when the Company Petition was taken up on merits before the Tribunal.

In that eventuality, it is settled principle that in any judicial proceedings either before the Court(s) or the Tribunal(s), if the counsel for any reason is not representing the cause of the litigant, though he has been engaged or does not put an appearance on the date when the matter is being heard, either the proceedings should be directed to be proceeded ex parte, in order to enable the litigant to avail an opportunity to engage another counsel.

The said principle was considered by the Hon'ble Apex Court in the Judgment reported in **1981 Vol 2 SCC 788 Rafiq & Anr. V. Munshilal & Anr.,** the relevant extract of Para 3 is given hereunder:

> *``3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the*

negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr A.K. Sanghi.''

17. The controversy if it is to be looked into from the view point that, as on the date when the hearing was held, the Appellants was not at all instrumental in any manner whatsoever when the counsel engaged on their behalf, has not put an appearance. If that be the situation, the Hon'ble Apex Court in **Civil Appeal No. 4758 / 2023 Ashok Kumar V. New India Assurance Co. Ltd.** in its Para 8 has laid down that, any voluntary act conducted by the counsel engaged on behalf of any of the parties before the proceedings, if he acts whimsically on his own wisdom, the litigant is not to be made to suffer for any voluntary decision of the counsel, which is an akin situation herein also, because the date when the proceedings was taken up, the Appellants were not informed by the counsel that he would not be appearing for whatsoever genuine reason the counsel had and

hence, the Appellants cause remained un-represented before the Ld. Tribunal, for which the Appellant cannot be made to suffer.

The relevant para 8 is extracted hereunder:

> ``*8) In view of the foregoing, it has to be reiterated that the complaint No. 515 was filed after theft due to non-settlement of claim by the Insurance Company. The repudiation of the claim was made during the pendency of the said complaint, purportedly due to breach of condition no. 1 and 5. The said complaint was withdrawn by the advocate of the complainant on the pretext of the case being prolonged by the advocate of the Insurance Company, without having express instructions for withdrawal of the said complaint.* ***However, for the fault of the advocate, the complainant cannot be made to suffer.*** *Finally, the dismissal of the complaint was made by the National Commission under the wrong pretext that the earlier complaint had challenged the order of repudiation. Thus, in our view, the complaint cannot be thrown out on the threshold of Order XXIII Rule (1)(4) CPC and in the peculiar facts, it requires consideration on merits.*

18. Almost a similar view has been yet again taken by the Hon'ble Apex Court in the Judgment rendered in Miscellaneous Application No. 2214 of 2024 Sahil Kaushik v. Shelpan Lohia @ Shelpan Kaushik as decided on 07.01.2025, where following observations has been made in Para 6, which is extracted hereunder.

> ``*6. The parties should not be made to suffer due to the lapses of the lawyer''.*

19. The Ld. Counsel for the Respondent submitted that, if we go through the contents of Para 11 & 12 of the impugned judgment, the Tribunal has taken due consideration of the counter affidavit, which has been filed by the Appellants in

the proceedings before the Ld. NCLT, but a very cursory observation has been made by the Ld. Tribunal, limited to the effect that, the Appellants have failed to prove the said amount was advanced as a loan, the finding which has been recorded in Para 11 & 12 cannot be said to be at all a detailed determination of the pleading raised by the Appellants in their counter affidavit because even otherwise, it is the settled principle of law that even if the matter is directed to be proceeded ex parte against the party to the proceedings, it becomes incumbent on part of the adjudicatory body or court that they ought to have considered and addressed upon the pleading that had been raised by the party to the proceedings i.e. the Appellants herein and the order should reflect an application of rationale consideration to the pleadings at least, which has already been raised by the party to the proceedings and should have determined the same as to how the grounds taken by the Appellant in the objection were contrary to the contents of the application preferred under Section 43 of the I & B Code, 2016.

20. Exclusively on the ground that, on the date when the Company Petition was itself decided finally, as the Appellants were not represented by any counsel, the Company Appeal is allowed, the impugned order dated 30.11.2022, would stand quashed, subject to the payment of costs of Rs.50,000/- (Rupees Fifty Thousand only) to be deposited into The Prime Minister's Relief Fund within a period of 10 days from today.

21. The Ld. NCLT Bengaluru Bench, is requested to decide the Company Petition, afresh after giving an opportunity to the party to the proceedings.

Subject to the above, the Company Appeal (AT) (CH) (INS) No. 28 / 2023, would stand allowed. Connected pending Interlocutory Applications, if any, are disposed of.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

SR/MS/AK