

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 418 of 2022

IN THE MATTER OF:

Ashok Tiwari

...Appellant

Versus

DBS Bank India Ltd. (DBIL) & Anr.

...Respondents

Present:

For Appellant: Mr. Arvind Verma, Sr. Advocate with Mr. Kumar Ayush, Mr. Ashuthosh Thakur, Mr. Prabhat Ranjan Raj, Mr. Sidharth Sarthi, Mr. Anil Kumar, Mr. Shaswat Anand, Advocates

For Respondent: Mr. Dhruv Malik, Palak Nenwani, Mannat Sabharwal, Advocates for R-1.
Mr. Ritu Rastogi, Advocate for IRP, R-2.

ORDER
(Virtual Mode)

04.07.2022: Heard Mr. Arvind Verma, Learned Sr. Counsel for the Appellant and Mr. Dhruv Malik, Learned Counsel appearing for the Respondent No.1.

2. This Appeal has been filed against the Order dated 25th March, 2022 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) by which Application under Section 7 filed by the DBS Bank India Ltd. has been admitted.

3. The Appellant's case in the Appeal is that notices were issued by the Adjudicating Authority on 22nd March, 2022 which was served on the Appellant on 07th March, 2022 and 25th March, 2022 was date fixed on which date the

Advocate appeared on behalf of the Appellant but he having not filed a Vakalatnama he was not heard by the Adjudicating Authority and Adjudicating Authority proceeded and passed an order admitting the Application.

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.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayan Murthy]
Member (Judicial)

Mr. Barun Mitra]
Member (Technical)