

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7281 OF 2018

JORD ENGINEERS INDIA LTD.
THROUGH ITS SIGNATORY

..... APPELLANT(S)

VERSUS

VALIA AND CO. (D) THR. LRS

..... RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

Having heard learned counsel for the parties and having perused the material placed on record, we are clearly of the view that the impugned order dated 09.07.2018 passed by the National Company Law Appellate Tribunal, New Delhi ('the Appellate Tribunal') in Company Appeal (AT) (Insolvency) No. 158 of 2017 cannot be sustained, for the appellant having been deprived of a reasonable opportunity of hearing and the order having been passed in its absence after remand by this Court.

The matter relates to an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 filed by the respondent, said to be an operational creditor, alleging default in payment of a sum of Rs. 4.72 crores against the goods supplied in the year 2012. The application was admitted by the National Company Law Tribunal, Mumbai Bench ('the Tribunal') by its order dated 31.07.2017. However, the said order

was set aside by the Appellate Tribunal on 13.10.2017, essentially on the ground that the demand notice was served by an advocate holding no position with or in relation to the operational creditor.

The respondent-operational creditor questioned the said order by way of a petition for special leave to appeal in this Court, being SLP(C) No. 8145 of 2018. In the petition so filed by the operational creditor, a Division Bench of this Court, in its order dated 02.04.2018, considered it proper to remand the matter to the Appellate Tribunal in view of the decision in the case of *Macquarie Bank Limited v. Shilpi Cable Technologies Limited: (2018) 2 SCC 674*, wherein it was held that a notice on behalf of the operational creditor by a lawyer would be in order. However, fact of the matter remains that the said order dated 02.04.2018 was passed without notice to the other side; and it was also provided therein that the respondent would be at liberty to move the Court, if aggrieved. It was further enjoined upon the petitioner before this Court i.e., the operational creditor, to put the respondent to notice of the order and to file proof thereof before the Appellate Tribunal.

As per observations of the Appellate Tribunal in opening paragraph of the impugned order, the registry was directed to serve notice on the parties and in response thereof, respondent of the appeal appeared but nobody appeared on behalf of the appellant. Fresh notice was issued on which, the Appellate Tribunal received postal endorsement to the effect that the appellant had 'left' the given address. Thus, notice could not be delivered to the appellant.

However, the Appellate Tribunal chose to examine the matter with reference to the said decision in *Macquarie Bank Limited* and held that the petition filed by the operational creditor was within limitation.

Several grounds are urged in challenge to the order aforesaid but the fundamental factor remains that the appellant was not present before the Appellate Tribunal; and it is difficult to impute knowledge in the appellant about the order passed by this Court on 02.04.2018 without notice and then, about revival of the proceedings before the Appellate Tribunal.

The appellant has attempted to put forward several contentions on merits, including the one that it was a case of pre-existing dispute. We are not commenting on the merits of the case either way but, so far as initiation of corporate insolvency resolution process at the instance of respondent-operational creditor is concerned, the relevant facts and factors, including the question of pre-existing dispute, deserve due and adequate consideration by the Appellate Tribunal.

In view of the above, it appears just and proper that while setting aside the impugned order dated 09.07.2018, the matter be again restored to the file of the Appellate Tribunal for decision afresh and on merits.

Before closing this matter, we also deem it appropriate to observe that in this appeal, this Court, by the order dated 06.08.2018, had stayed the proceedings before the Tribunal but then, by another order dated 16.04.2019, it was made clear that the said stay order would not stand in the way of other creditors in proceeding in accordance with

law, subject to the objections.

In continuity with the orders aforesaid, it is provided that further proceedings before the Tribunal shall remain stayed until final decision of appeal by the Appellate Tribunal but, neither pendency of the said appeal nor any observations made in these proceedings shall be of any effect on other proceedings, if taken up by other creditors, financial or operational, which may be dealt with on their own merits.

Accordingly, this appeal is allowed to the extent and in the manner indicated above; the impugned order dated 09.07.2018 passed by the Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 158 of 2017 is set aside; and the said appeal is restored for reconsideration of the Appellate Tribunal. The parties present before us shall be stand at notice to appear before the Appellate Tribunal at the first instance on 18.04.2022.

We would request the Appellate Tribunal to assign a reasonable priority to this matter and to proceed expeditiously.

.....J.
(DINESH MAHESHWARI)

.....J.
(ANIRUDDHA BOSE)

New Delhi;
March 28, 2022.