

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
Comp. App. (AT) (Ins) No. 1007 of 2023  
& I.A. No. 3439 of 2023**

**In the matter of:**

**Jeevan Birje Parashram**

**....Appellant**

**Vs.**

**M/s. Kamal Metal Corporation & Anr.**

**...Respondents**

**For Appellant: Mr. Varun Singh and Mr. Purushottam Kr. Jha,  
Advocates.**

**For Respondents:**

**ORDER**

**08.08.2023: IA No.3439 of 2023:-** There is a delay of 14 days in filing the Appeal. The ground taken is that the order which was passed on 06.06.2022 was received by the Appellant on 21.06.2023 due to which delay was caused. Sufficient cause shown. Delay is condoned.

Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 06.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-V by which order the Adjudicating Authority admitted Section 9 Application filed by the Operational Creditor. The Operational Creditor filed Application claiming an amount of Rs.1,21,73,639/- as operational debt. The Adjudicating Authority issued notice to the Corporate Debtor and asked the Corporate Debtor to file Reply. In spite of serving of the notice, the Corporate Debtor did not appear and Corporate Debtor sent an e-mail to the Operational

Creditor that they are looking forward to settle the matter and are in a dialogue with the Banker to get financial assistance. The case was adjourned by the Adjudicating Authority on the basis of said e-mail. Subsequently, Bench ordered twice to serve notice which was delivered. Counsel appeared on behalf of the Corporate Debtor on 21.02.2023 and he was asked to file a reply. When again the matter was listed on 17.04.2023, the Corporate Debtor did not appear. The Adjudicating Authority thereafter proceeded and passed an order admitting Section 9 Application. The Adjudicating Authority after noticing the ledger of the Operational Creditor and report of the NSeL dated 28.12.2020 admitted Section 9 Application.

3. Counsel for the Appellant challenging the order contends that the amount was less than the threshold since the payment has been shown in the ledger is only Rs.5 lakh and whereas the payment made was of Rs.10 lakhs. He further submits that the Application was barred by Section 10A. He submits that the interest could not have been levied. He further referred to the legal notice which was issued on 27.09.2020 by the Operational Creditor and has referred to paragraph 11.

4. We have considered the submissions of the Counsel for the Appellant and perused the record.

5. The Adjudicating Authority in paragraphs 6.3 and 6.4 made following observations:-

*“6.3 On 09.04.2021, the Bench ordered Court Notice to be served upon the Corporate Debtor, by the NCLT Registry, to appear on 01.07.2021 and file its reply in the matter. On 01.07.2021, none appeared on*

*behalf of the Corporate Debtor. However, counsel for the Operational Creditor submitted before the Bench that he had received an Email from the Corporate Debtor side stating that they are looking forward to settling the matter and are in a dialogue with the banker to get financial assistance. Thereafter, the matter was again listed on 13.12.2021. None appeared on behalf of the Corporate Debtor. However, the counsel for the Operational Creditor submitted before the Bench that they have received an Email from the Corporate Debtor acknowledging the liability and offering to settle the outstanding debt.*

*6.4 The matter was listed on 20.09.2022. This Bench ordered Court Notice dated 27.09.2022, to be served by the NCLT Registry, upon the Corporate Debtor to appear on 14.11.2022 and file its reply in the matter. The said Court Notice was delivered upon the Corporate Debtor on 11.10.2022. The matter was listed for hearing on 14.11.2022 and 22.12.2022. Due to paucity of time the matter adjourned to 21.02.2023, wherein Adv. Mr. Jigarkumar Gandhi appeared on behalf of the Corporate Debtor and undertook to file the reply and vakalatnama on behalf of the Corporate Debtor. The matter was again listed on 17.04.2023 for final hearing. However, none appeared on behalf of the Corporate Debtor. Neither any reply was filed.”*

6. When the Corporate Debtor inspite of ample opportunities does not appear and file any defense, we are of the view that such Corporate Debtor cannot be allowed to raise factual issues and question the findings recorded by the Adjudicating Authority. It is clear that the Corporate Debtor sent an e-mail that he wants to settle the matter and on that ground the matter was adjourned. The Adjudicating Authority called the Corporate Debtor to appear and issued notice, which was duly served. The counsel for the Corporate Debtor appeared and even then he did not file any reply. We are of the view

that such Corporate Debtor cannot be allowed to now raise factual issue and contend that the claim was less than Rs.1 Crore.

7. We further notice paragraph 11 of the notice issued by the Corporate Debtor, which has been relied by the Appellant, provides as follows:-

*“11. My client states that, it is pertinent to note that, after the Tri Party agreement dated 29/11/2019 executed between you no.1, our client firm and one M/s. Akaar Founders Pvt Ltd, for the clearance of due pending amount from you no.1,2,3,4 and no.5, M/s. Akaar Founders Pvt Ltd disbursed our client firm payment of Rs. 10 Lakhs for and on behalf of You no.1, same has been acknowledge by our client and same has been deducted by our client from total outstanding and net outstanding as on date is of Rs. 1,01,91,060/-(Rupees One Crore one Lakh, Ninety One Thousand and Sixty Only), since then You no. 1,2,3,4 and no.5 did not cleared outstanding amount towards our client.”*

8. In paragraph 11, the claim of the Operational Creditor was Rs.1,01,91,061/-. Thus, the said notice in no manner help the Appellant.

9. Learned Counsel for the Appellant further contended that the Application was barred by Section 10A. He submits that the date of default mentioned is 11.03.2020. When the date of default is 11.03.2020, it is clearly before the 10A period. Hence, we are of the view that the said ground does not help the Appellant.

10. Learned Counsel for the Appellant has further referred to letter dated 22.02.2020 sent by the Operational Creditor. He submits that the Operational Creditor has acknowledged the receipt of Rs.5 Lakhs on 13.02.2020 and Rs. 5

Lakhs on 22.02.2020. He submits that although second figure is mentioned in the ledger, the first figure is not mentioned.

11. As observed above, the Appellant did not appear before the Adjudicating Authority inspite of several opportunities and inspite of specific notice given to him to appear before the Adjudicating Authority, counsel appeared and took time to file reply and did not file reply. We are of the view that on such conduct of the Corporate Debtor this Appellate Tribunal is not inclined to grant any indulgence or consider any submission on the facts.

12. The Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

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

***Anjali/nn***