
(2021) 08 DEL CK 0191

In the Delhi High Court

Case No : Letter Patent Appeal No. 293 Of 2021, Civil Miscellaneous Application
No. 27762 Of 2021

GP CAPT Atul Jain

APPELLANT

Vs

NCLAT & Ors

RESPONDENT

Date of Decision : 25-08-2021

Acts Referred:

National Company Law Tribunal Rules, 2016 — Rule 38, 51
Insolvency And Bankruptcy Code, 2016 — Section 7, 61

Citation : (2021) 08 DEL CK 0191

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Jyoti Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.N. Patel, CJ

Proceedings have been conducted through video conferencing. CM APPL. 27762/2021 (Exemption from filing notarized affidavits)

For the reasons stated in the application and in view of the present prevailing situation, the present application is allowed. However, the applicant is directed to file duly signed and affirmed affidavits within a period of one week from the date of resumption of regular functioning of the Court.

Application is disposed of.

LPA 293/2021

1. Being aggrieved and feeling dissatisfied with the order of the Learned Single Judge in WP(C) 4338/2021 dated 09.04.2021, Appellant (Original Petitioner) has preferred the present Letters Patent Appeal.

2. Appellant in person submits that he had filed a writ petition before the learned Single Judge of this Court impugning orders dated 12.10.2020 and 17.12.2020 passed by learned NCLAT, whereby directions were issued to the parties before

the NCLAT to file brief written submissions and copies of the judgments on which they wanted to rely on at the time of arguments as also a direction to provide copies of the brief written submissions filed by the Appellant to the Respondent / Hospital. According to the Appellant, the said directions are beyond the jurisdiction of the NCLAT which does not enjoy the power to regulate its own procedure unlike the NCLT, which has such a power under Rule 51 of the National Company Law Tribunal Rules, 2016. It is also contended that neither in the Companies Act, 2013 nor under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') there is any procedure under which a direction can be issued to file written submissions and judgments. It is also the submission of the Appellant that under NCLAT Rule 38, the parties or legal practitioners are only required to furnish a list of citations, which may be needed for reference, before the commencement of proceedings but not in advance for the future hearings.

3. The brief factual narrative involved in the present case, as set out in the appeal, is that the Appellant had advanced a loan of Rs.40 Lakhs as his hard-earned retiral benefits to Tripathi Hospital Private Limited (THPL) on request of its two Directors. The Directors and the CMD cheated the Appellant and did not return the loan amount, as assured, in June 2017. Appellant filed an application under Section 7 of IBC before NCLT, Allahabad Bench on 14.10.2019, which was dismissed vide order dated 25.06.2020.

4. An appeal was preferred against the said order by the Appellant on 21.07.2020 under Section 61 of IBC before NCLAT, New Delhi. Vide order dated 12.10.2020, NCLAT directed the parties before it to file brief written submissions and copies of the judgments they wished to rely on. It is submitted by the Appellant during the course of hearing that the written submissions were filed by the Appellant on 02.11.2020.

5. Vide further order dated 17.12.2020, the Appellant was directed to supply brief written submissions to the Respondent. Copy of the written submissions was not supplied by the Appellant and on 05.01.2021, the Appellant stated before NCLAT that he would not be able to provide a copy and that he had made a representation to the Acting Chairperson and the Members of the Appellate Tribunal that there was no provision which compelled the Appellant to provide written submissions to the other side.

6. Aggrieved by the aforesaid orders, Appellant filed a writ petition being W.P. (C) 4338/2021 before the learned Single Judge of this Court. The writ petition was dismissed on 09.04.2021, on the ground that written submissions are meant to facilitate adjudication and that the NCLAT being an Appellate Tribunal under the IBC is free to regulate its procedure and no infirmity can be found with the directions to file written submissions / judgments and exchange copies thereof between the parties.

7. We have heard the Appellant, who appears in person. The primordial ground

raised by the Appellant is that there is no Rule or procedure which permits the NCLAT to direct filing of written submissions / judgments and exchanging copies thereof, between the parties.

8. Appellant may be right in his submission that there is no written procedure which provides for filing of written submissions or exchanging copies thereof between the parties, but that, in our view, cannot lead to a conclusion that the impugned orders of the NCLAT are illegal. As rightly held by the learned Single Judge, Courts or Tribunals usually direct filing of the brief written submissions in order to facilitate the adjudication and crystallize the issues involved in the matter before them. The questions of law and facts are placed before the Courts in a concise manner, which certainly streamline the course of proceedings, and exchanging the copies of the written submissions enables each side to meet the case of the other side more effectively at the time of final hearing. This Court fails to understand the prejudice caused to the Appellant by the impugned directions, more particularly, when the Respondent had also been directed to file the written submissions / judgments and the copy has been supplied to the Appellant, which is evident from reading of the orders passed by the NCLAT. We also notice that the NCLAT has only directed the parties to file written submissions not exceeding three pages but the Appellant has, on his own volition, chosen to file a voluminous paper book, for which only he can be blamed.

9. Insofar as a direction to exchange the written submissions between the parties is concerned, we do not find any merit in the contention of the Appellant. It is a matter of practice in all Courts and Tribunals as also a facet of principles of natural justice that when any party to a lis files any pleading/affidavit/document before a Court or a Tribunal, a copy is required to be given to the other side, as no document etc. can be relied upon by the Court without giving an opportunity to the other side to effectively deal with the said document. The only exception to such a course of action could be where privilege is claimed before a Court, in accordance with the procedure laid down to do so, looking at the confidential nature of the documents / files or even where no privilege is claimed but the document is highly confidential in nature and can only be shared with the Court and the information cannot be disclosed to the other party, e.g., a report by the Police or Investigating Agency during the pendency of any investigation.

10. In the present case, Appellant has filed his written submissions before the NCLAT on 02.11.2020. Therefore, even assuming that there was no categorical direction by the NCLAT to supply a copy to the Respondent, in our view, it was incumbent upon the Appellant to share a copy with the Respondent, to enable the Respondent to defend its case and rebut the issues highlighted by the Appellant in the written submissions. It would be a travesty of justice if the NCLAT takes into account the written submissions of one party without a copy having been shared / exchanged with the other party.

11. For the aforesaid reasons, we see no infirmity in the order dated 09.04.2021 (Annexure A-1 to the memo of this LPA) passed by the Learned Single Judge

while deciding WP(C) 4338/2021.

12. There is no merit in the appeal and the same is accordingly dismissed.