

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

Company Appeal (AT) (Insolvency) No. 989 of 2022

IN THE MATTER OF:

Trident Fabricators Pvt. Ltd.

...Appellant

Versus

Hiranmayee Energy Ltd.

...Respondent

Present:

**For Appellant: Mr. Kausik Chatterjee and Mr. Soumya Dutta,
Advocates.**

**For Respondent: Mr. Shambo Nandy and Mr. Kinjal Sheth,
Advocates.**

ORDER

23.08.2022: This Appeal has been filed against the order dated 24.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by which I.A. No. 770/KB/2021 filed by the Appellant praying for directions upon Corporate Debtor to disclose the following documents has been rejected:-

“i) Detailed balance sheet of the Corporate Debtor from 2015-2016 till 2020-2021.

ii) Ledger accounts with regard to transactions of the Operational Creditor maintained by the Corporate Debtor from 2015-16 till 2020-2021.

iii) Trial Balance maintained by the Corporate Debtor with regard to its dues towards its creditors, which includes transaction with the Operational Creditors from 2015-2016 till 2020-2021 and other

Cont'd.../

financial statements of the Corporate Debtor including the annual accounts from 2015-2016 till 2020-2021.”

2. The Adjudicating Authority has given cogent reasons for not accepting the prayers of the Appellant. In Para 27 the following observations have been made by the Adjudicating Authority:-

“27. After going through all the pleadings of the parties made in the petition, it appears that the Operational Creditor has a good case to be tried in Civil Court but not before this Adjudicating Authority because the Corporate Debtor has raised so many issues regarding privity of contract with the Operational Creditor which cannot be sorted out or decided by this Adjudicating Authority in this matter of summary procedure. The prayers made in this application no.770/2021, seeking directions upon the Corporate Debtor to file the various documents enumerated in the prayers clause of this application, it seems unusual for this Adjudicating Authority to support the Operational Creditor by permitting its prayer to be granted thereby allowing the Corporate Debtor to file all the documents favouring the Operational but to the detriment of the Corporate Debtor. This Adjudicating Authority has a very limited jurisdiction of looking at the petition containing the information relating to existing outstanding debt and default in repayment thereof by the Corporate Debtor. If the Corporate Debtor has committed a default, the Operational Creditor has to place all documents on record. This Adjudicating

Authority has only to see the authenticity of the information and the documents for reaching a conclusion whether a case for admission of the petition or initiation of CIRP is made out or not. The prayer clause of the Operational Creditor seeking directions upon the Corporate Debtor to produce all the documents by way of an affidavit, so that the Operational Creditor may prove its case against the Corporate Debtor is, to our mind, beyond our jurisdiction. Each Operational Creditor has to prove its own case. It cannot base its claim on the basis of documents to be produced by the opposite party and this Adjudicating Authority would not like to be passing such a direction upon the Corporate Debtor to facilitate the admission of petition filed by the Operational Creditor. I.A. No. 770/KB/2019 filed by the Operational Creditor seeking aforesaid directions, therefore, has no substance and cannot be accepted. The application is, therefore, dismissed.”

3. Learned counsel for the Appellant has referred to Rule 43 of the NCLT Rules, 2016. Sub-rule (1) and (2) of Rule 43 on which reliance has been placed is to the following effect:-

“43. Power of the Bench to call for further information or evidence. – (1) *The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-*

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.”

4. Rule 43 of the NCLT Rules, 2016 deals with powers of the Bench to call further information or evidence. There cannot be any quarrel regarding Bench having such powers. Rule 43 (1) and (2) gives ample powers to the Bench to call any information or evidence as it may consider necessary in its discretion.

5. In the present case, the Appellant has filed an I.A. seeking directions to the Corporate Debtor to disclose certain documents as has been noticed above. The Adjudicating Authority after considering the application has given reasons especially that there is no privity of contract between the

Appellant and the Corporate Debtor, hence, he is not entitled to call for documents.

6. We do not find any error in the order of the Adjudicating Authority rejecting the I.A. filed by the Appellant. We are of the view that the Adjudicating Authority has exercised its discretion in accordance with law after giving due reasons which does not warrant any interference in exercise of our Appellate jurisdiction. We, however, make it clear that while rejecting the I.A. filed by the Appellant, the observations made by the Adjudicating Authority shall not be considered as final conclusive opinion at the time of disposal of Section 9 application.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Barun Mitra]
Member (Technical)

Archana/nn