

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.432/2024
(IA Nos.1183 & 1184/2024)

(Arising out of the 'Impugned Order' dated 04.11.2024 in
I.A. No. 789 of 2024 in CP(IB) No.36/BB/2024, passed by the
'Adjudicating Authority', (National Company Law Tribunal',
Bengaluru Bench)

In the matter of:

M/s. Dunzo Digital Pvt. Ltd.,
1st Floor, 2, Saideep Srinidhi
Nal Wind Tunnel Road,
Murugesbapalaya, Bangalore
Karnataka – 560 017.

... Appellant

v.

M/s. Velvin Packaging Solutions Pvt. Ltd.,
3rd Floor, B-303, Mangalya CHS Ltd.,
Maroshi Road Andheri East Mumbai,
Maharashtra – 400 059.
Represented by Mr. Aakash Chandak

... Respondent

Present:

For Appellant : Mr. Kumar Anurag Singh & Mr. Zain A Khan, Advocates

For Respondent : Mr. Manjunatha Hiral, Advocate

ORDER
(Hybrid Mode)

29.11.2024:

Heard the Learned Counsel for the Parties. The instant Appeal has been preferred by the Appellant under Section 61 of I & B Code, 2016, is being aggrieved as against the Impugned Order dated 04.11.2024, as it was passed in IA No.789/2024, preferred in CP(IB) No.36/BB/2024, whereby the application seeking recall of the order dated 04.09.2024, has been rejected by the Learned Adjudicating Authority, NCLT, Bangalore, and as a consequence thereto the Appellant has been deprived to oppose the proceedings of Section 9 of the I & B Code, as his opportunity to file objection/reply was forfeited. Few facts and

dates would be relevant to note at this point. According to the records, the proceeding under Section 9 stood initiated on 01.12.2023, and after putting in the first appearance, the Appellant was granted time for the first time to file an objection on 20.02.2024. There was a simultaneous proceeding going on amongst the parties for venturing into the possibilities of making a settlement of the dispute between the parties. By an order of 31.07.2024, the Learned Tribunal had made an observation that, if no settlement matures, the Appellant will file the counter as directed earlier, failing which the right of the Appellant/Respondent, to file an objection to the Company Petition, will be fortified. In the subsequent proceedings, which were held on 04.09.2024, the Learned Adjudicating Authority has observed that there was a non-compliance of its earlier order dated 31.07.2024, owing to the fact that, the settlement did not occur, nor it was placed on record, and that contrary to its directions to file objections in the event of non-finalization of the settlement, the Appellant has not filed his counter and hence his opportunity to file the counter was closed in furtherance of the order of 31.07.2024. The relevant part of the order as passed on 04.09.2024, is extracted hereunder: -

“2. It is noticed that vide Order dated 31.07.2024, the Ld. Counsel for the Respondent was granted time to settle the matter. If the settlement did not occur, the Respondent was directed to file objection within two weeks. In spite of availing sufficient time, no objection has been filed by the Respondent till date and is not requesting further time for settlement”.

Subsequently, the Appellant filed the recall application on 27.09.2024 being IA No.789/2024, seeking recall of the order dated 04.09.2024, which closed his opportunity to file his counter in the proceedings under Section 9 of I & B Code, 2016. The Appellant had raised various contentions in his recall application, particularly those which he has referred to during the course of the argument as contained in para 6 onwards of the said application. He has contended that the Learned Adjudicating Authority while considering the recall

application being IA No.789/2024 dated 27.09.2024, has dismissed the same without making any observations on the grounds submitted by the Appellant and that as a consequence of such, he has been deprived to file an objection to the Section 9 Application of the Respondent on merits.

The Appellant submits that the Impugned Order suffers from the Appellant vices for the reason being that, the grounds which has been pleaded by him, in the application preferred on 27.09.2024 for recalling the order of 04.09.2024, have neither been referred to nor have been considered by the Learned Adjudicating Authority, while rejecting his recall application and thus the order happens to be perverse, on account of non-consideration of the grounds taken in the recall application. Owing to the aforesaid fact, coupled with the fact that it is the settled principle of law that the parties to a proceedings should be given a fair opportunity to contest the case, that the proceedings stood initiated only on 01.12.2023, which was not such a long period to close the opportunity to the Appellant to file the objection to the principal proceeding under Section 9 of I & B Code by passing the Impugned Order, rejecting the recall application as preferred on 27.09.2024, which in fact would deprive the Appellant to contest the proceedings on merit, upon the failure of the settlement process as observed in the order of 04.09.2024, the order of Learned NCLT in reflecting the Recall Application appears to be violative of natural justice.

The process of filing of the objection to the principal proceedings under Section 9 of the I & B Code, should not be placed in a time bound straight jacketed formula, and in case, if there are one or two instances of failure in filing the objection to the principal proceedings, that may not be derived as to be a reason to deprive a person of the opportunity to participate in a proceeding on merits, because certain relaxations have been contemplated under the law under the provisions of Order VIII in the light of the interpretation provided by the Judgment of the Hon'ble Apex Court has rendered in **2005 (6) SCC Page**

344 Salem Advocates Bar Association v/s. Union of India. The relevant para 20 and 21 are extracted hereunder:-

“20. The use of the word “shall” in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word “shall” is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word “shall”, the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to

“make such order in relation to the suit as it thinks fit”. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1. [Ed.: See also Short Notes E to J in Kailash v. Nanhku, (2005) 4 SCC 480 wherein this was the only question before the Supreme Court and wherein a three-Judge Bench has come to exactly the same conclusion. See especially Short Notes F and G therein wherein the Court has dealt with the issue of how to deal with defendants bent on abusing the process of court and delaying proceedings.]”

Though CPC will not strictly apply to the proceedings under I & B Code, the principles laid down will still continue to guide the proceedings in the instant case. Accordingly, the Appellant ought to have been granted an opportunity to file an objection to the principal proceedings under Section 9 of the I & B Code, 2016.

Owing to the aforesaid, the Impugned Order rejecting the recall application dated 04.11.2024 as well as order dated 31.07.2024 of forfeiture of opportunity to file objection would hereby stand quashed. The Appellant is granted two weeks’ time by way of the last opportunity to file his objection to the proceedings under Section 9 of I & B Code, on merits. Failure to file an objection within the aforesaid time period of two weeks from the date of receipt of the certified copy of this Judgment will amount to the closure of this opportunity to file counter and Section 9 proceedings will proceed exparte against him. In the event, he files the objection within a period of two weeks from the date of receipt of the certified copy of this Judgment, the proceedings under Section 9 would be carried on its own merits as per law. Subject to the

aforesaid, the Appeal stand allowed. The orders dated 04.11.2024 as well as 31.07.2024 would stand quashed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/TM/MS