

National Company Law Appellate Tribunal, New Delhi

Principal Bench

COMPANY APPEAL (AT) (Insolvency) No. 278 of 2021

(Arising out of Order dated 16.02.2021 passed by National Company Law Tribunal,
New Delhi Bench, Court -IV in CP (I.B.) No.- 361/ND/2020)

IN THE MATTER OF:

**EVO Green Trading Pvt. Ltd.
Through its Director
Mr. Karan Bansal,
Office at: - 1/5, WHS Kirti Nagar,
New Delhi- 110015**

**.....Appellant
(Corporate Debtor)**

Versus

**Volkswagen Finance Pvt. Ltd.
Registered Office at:
3rd Floor, WING-A,
Silver Utopia Cardinal,
Gracious Road, Chakala,
Andheri Mumbai,
Mumbai City, MH- 400099**

Also At:-

**Volkswagen Finance Pvt. Ltd.
2nd Floor, Enkay Tower,
Vanijya Nikunj, Udyog Vihar,
Phase V, Gurugram, Haryana-122016**

**.....Respondent
(Financial Creditor)**

**Appellant: Mr. Murari Kumar & Mr. Achint Kumar, Advocates.
Respondent: None.**

J U D G E M E N T

Anant Bijay Singh (J)

1. The Instant Appeal bearing Company Appeal (AT) (Insolvency) No. 278 of 2021 filed on behalf of EVO Green Trading Pvt. Ltd. being aggrieved and satisfied

by the Impugned Order dated 16th February, 2021 passed by the Hon'ble Adjudicating Authority, National Company Law Tribunal, New Delhi, Court-IV in CP (IB)- 361/ND/2020 is hereunder.

2. Learned Adjudicating Authority passed the following orders: -

“Learned Counsel for the Corporate Debtor states that they have been recently engaged and seeks further time to comply the order dated 16.12.2020, when last opportunity was given to file reply within one week, subject to cost of Res. 15,000/- but till date order is not complied and further time is sought. Right to file reply is closed.”

3. Learned Counsel for the Appellant while assailing the Impugned Order submitted that the Respondent (Financial Creditor) has filed an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (**in short 'IBC'**) against the Appellant (Corporate Debtor) on 09.01.2020 claiming an overdue amount of Rs. 74,97,822/- (Rupees Seventy-Four Lakhs Ninety-Seven Thousand Eight hundred and Twenty-Two Only).

4. Further, on 11.02.2020, the Hon'ble NCLT Delhi was pleased to issue a notice to the Respondent in CP (IB)-361/ND/2020 and further on 04.03.2020, Learned Counsel for the Respondent accepted the Notice and undertook to file

Vakalatnama within three days and Reply within ten days and the matter got adjourned for 17.04.2020.

5. It was further submitted that in between Covid-19 Pandemic intervened and the Tribunal got lockdown and was not functioning.

6. Further, the matter was again listed before the Hon'ble NCLT on 16.12.2020 and taking under all the facts on 04.03.2020 on that date Learned Counsel for the Respondent undertook to file Reply within ten days again time was prayed for, on the grounds that one family member was suffering from COVID-19.

7. One-week time was granted by the Learned Tribunal to file Reply Affidavit and last opportunity was given to the Learned Counsel for the Respondent subject to payment cost of Rs. 15,000/- (Rupees Fifteen Thousand Only) to Applicant. Further, Rejoinder be filed within one week, thereafter and the matter was directed to be listed on 18.01.2021. Copy of the Order dated 16.12.2020 is marked at Annexure A-6 at Page No. 37 of the Appeal Paper Book.

8. Learned Counsel for the Appellant while referring to Annexure A-7 at Page No. 38 which mentions the conversation on WhatsApp between the Learned Counsel for Appellant and Learned Counsel for the Respondent reveals that on 21.12.2020 the Learned Counsel for Appellant was informed that Reply had not been filed and the Court has imposed a cost of Rs. 25,000/- (Rupees Twenty-Five Thousand Only).

9. It was submitted that there was a conversation between the Appellant and his earlier Counsel and further it reveals that his earlier Counsel was professionally negligent because of him the Learned Tribunal order cost and the Reply was also not filed.

10. It was submitted that on 14.02.2021 the present Learned Counsel was engaged by the Appellant who filed a fresh Vakalatnama on 15.02.2021 before the Hon'ble NCLT in CP (IB)- 361/ ND/2020, copy of the Vakalatnama is marked at Page No.- 41 of the Appeal Paper Book.

11. On 16.02.2021, Hon'ble Tribunal granted one week more time to file the Reply subject to payment of cost of Rs. 15,000/- (Rupees Fifteen Thousands Only) which was imposed in the Order dated 16.12.2020.

12. It was submitted by the Learned Counsel for the Appellant while assailing the Impugned Order no reason given for imposing the cost by the Learned Tribunal and due to further negligence of his earlier counsel the Appellant should not suffer.

13. The cost of Rs. 15,000/- (Rupees Fifteen Thousand Only) imposed and also right to file Reply which was closed vide Impugned Order be set aside and the Appellant be allowed to file his Reply.

14. Heard the Learned Counsel for Appellant and pursue the aforesaid copy of the conversation made between the earlier Counsel and the Appellant is marked at Annexure- A-5 at Page No. 35 & 38 of the Appeal Paper Book.

15. Learned Counsel for the Appellant had nowhere made any averment in his Memo of Appeal that he has made complaints against his earlier counsel for professional negligence to the State Bar Council, Delhi.

16. Further, the Impugned Order was passed on 16.02.2021 at Page No. 29 of the Appeal Paper Book at Annexure A-1 that the Hon'ble Tribunal taken a note of this earlier Order dated 16.02.2021 whereby one last opportunity was given to file Reply Affidavit within one-week time, subject to deposition cost of Rs. 15,000/- (Rupees Fifteen Thousand Only) but the Order was not complied. So, right to Reply was closed.

17. Further, from the perusal of the records the Learned Adjudicating Authority directed that the matter to be listed on 16.03.2021.

18. Further, from the perusal of the record it appears that Instant Appeal was filed before this Hon'ble Tribunal on 19.03.2021, after expiry of the date fixed by the Learned Adjudicating Authority.

19. This shows that the Appellant was not serious in pursuing his remedy before the Learned Adjudicating Authority.

20. In view of the discussion made above, we do not find any reason to interfere with the Impugned Order.

21. So, the Impugned Order is hereby affirmed and the said Appeal is dismissed.

22. The Registry is directed to upload this Judgement on the website of this Appellate Tribunal.

23. Registry is directed to send a copy of the Judgement to the National Company Law Tribunal, New Delhi Bench.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
09th April, 2021

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