IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 3542/2020

M/S JAYHIND STEEL TRADERS Appellant(s)

VERSUS

ANSHUL VASHISTHA & ANR. Respondent(s)

O R D E R

1. This appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 (for short 'IBC') impugns judgment and order of National Company Law Appellate Tribunal, New Delhi (for short 'NCLAT') dated 30.09.2020 passed in Company Appeal (AT) (Insolvency) No. 656 of 2020, whereby the appeal of the suspended director of M/s Saturn Prefab India Private Limited (Corporate Debtor)(for short, 'C.D.') was allowed, and the order of the Adjudicating Authority (National Company Law Tribunal, Indore Bench)(for short, 'NCLT'), dated 13.03.2020, was set aside.

2. **The appellant in the capacity of an Operational Creditor (for short, O.C.) filed a petition under Section 9 of IBC for initiating Corporate Insolvency Resolution Process (for short, 'CIRP') of the C.D.**

3. **As per the CIRP petition, a total amount of Rs.1,56,25,154/- was due and payable by C.D. against the value of goods supplied, duly evidenced by invoices, and including interest on the delayed payment, as per the terms of the invoices, the amount due was Rs.1,81,61,422/-. The appellant had annexed the invoices as also the notice sent under Section 8 of IBC in support of its claim besides other documents.**

4. **The NCLT *vide* its order dated 13.03.2020 admitted the CIRP petition and appointed an interim resolution professional.**

5. **Aggrieved therewith, the suspended director of C.D. preferred an appeal before NCLAT.**

6. In the course of hearing of the appeal, on 10.09.2020 the NCLAT passed an order, after partly hearing the learned counsel for the appellant, requiring the appellant i.e., respondent herein to submit a chart detailing all the invoices raised by the O.C. upon the C.D. along with C.D.'s comments against each of those invoices. This was ordered with a view to have a clear picture of the amount due and payable by the C.D. to the O.C.

7. Pursuant to the aforesaid order dated 10.09.2020, a chart detailing such invoices with corresponding comments was submitted by the appellant (respondent herein) before the NCLAT on 16.09.2020.

8. The appellant herein has placed the aforesaid chart along with other papers in this appeal. The same has been marked Annexure A-14.

9. By referring to the said chart, the learned counsel for the appellant submitted that the respondents on their own have divided those invoices into two categories. One category relates to invoices admitted by the C.D., and the other are claimed to be fabricated. The grand total of the amount payable under the admitted invoices is Rs.1,50,12,839/- whereas the amount payable under the fabricated invoices is shown as Rs.1,01,72,864/-. The chart also discloses the payment allegedly made by the C.D. against those invoices, which comes to Rs.94,07,629/-. In addition to the said amount, Rs.27,09,322/- is shown to have been paid by Saturn Infra, a group company of the C.D., to O.C. on behalf of the C.D. Besides those two figures, the chart claims adjustment of Rs.30,00,000/- towards rejected material lying at factory site and confirmed by e-mail dated 29.03.2018.

10. The submission on behalf of the appellant is

that the figures shown in the chart make double adjustment of the amount paid by Saturn Infra; however, even if it is assumed that the payments shown against admitted invoices are correct, the deduction of Rs.30,00,000/-, towards rejected materials, from the amount payable, is without any basis. If deduction of Rs.30,00,000/- is rejected then the amount of default exceeds the threshold of Rs.1,00,000/- which was the trigger point on the date when the Section 9 petition was filed. It has also been submitted that the e-mail dated 29.03.2018 which has been relied by the C.D. to dispute liability to the extent of Rs.30,00,000/- is silent in respect of rejection of those goods. The e-mail only states 'rejected materials are by UT testing still there in our site'. It does not refer to the invoice numbers, the details of those goods and the value of those goods. In that context, the learned counsel for the appellant has prepared a chart depicting the list of invoices submitted by the appellant against the goods supplied and payments received thereunder. The chart so submitted not only discloses the details of the admitted invoices but also those which were denied by the C.D. Besides, the chart depicts that stand of C.D. before NCLT and NCLAT had been at variance and not consistent.

11. Based on that chart, it is submitted on behalf of the appellant that before NCLT the value of the admitted invoices was Rs.1,32,74,164/- whereas before NCLAT, the value of admitted invoices is Rs.1,50,12,839/-. It has also been pointed out from that chart that if the amount received against the invoices i.e. of Rs.98,07,629/- is set-off against the amount payable under the admitted invoices, there would still be a default of an amount well above the threshold to trigger CIRP proceedings as on the date of filing of the CIRP petition the threshold amount was Rs.1,00,000/-.

12. In such circumstances, it has been argued on

behalf of the appellant that after receipt of chart from the suspended director of the C.D., NCLAT ought to have given an opportunity to the O.C., appellant herein, to submit a contra chart so as to enable NCLAT to arrive at an informed decision. In absence thereof, NCLAT had been deprived of full facts and, therefore, its decision stands vitiated.

13. *Per contra,* on behalf of the respondents it is submitted that the amount(s) claimed by O.C. are against a running account. The documents on record indicate that there had been consistent demand from the C.D. to reconcile the ledger account, but the ledger account was not reconciled, in such circumstances there was a pre-existing dispute about the debt and, therefore, NCLAT was justified in allowing the appeal and setting aside the order of NCLT which, otherwise also, was in the nature of a non-speaking order as it had failed to address the rival contentions raised before it. It has

also been submitted that if the appellant wanted to dispute the chart submitted by the respondent (i.e., appellant before NCLAT), the appellant should have submitted a contra chart if the figures therein were disputed. In absence of any contra chart, NCLAT was justified in holding that there existed a pre-existing dispute as could be inferred from the e-mail sent to O.C. He, accordingly, prays that the appeal be dismissed.

14. We have accorded due consideration to the rival submissions and have perused the materials available on record.

15. It is not in issue between the parties that various invoices raised by O.C. against the C.D. are yet to be paid. The dispute, however, is whether those invoices are genuine or fabricated, and whether goods supplied against them were liable to be rejected or not. These issues would have to be addressed by the

Adjudicating Authority as well as NCLAT based on the evidence available on record to find out whether there is a genuine pre-existing dispute in respect of the dues claimed or it is merely a moonshine defense.

16. **In the instant case, what we notice from the record is that NCLAT in the course of the hearing of the appeal had required the appellant before it, namely, the suspended director of the C.D., to place a chart detailing the invoices raised upon the C.D. along with its comments on those invoices. Obviously, the purpose was to find out whether there was any pre-existing genuine dispute regarding the claimed/ defaulted dues. It is also not in issue that based on the order passed by NCLAT, a chart was submitted on behalf of C.D. The chart so submitted delineated the invoices earmarking the admitted and the disputed ones, and the sum payable against them. The chart also indicated that a deduction of Rs.30,00,000/- was claimed against the amount**

payable under the invoices on account of goods claimed to have been rejected. Whether that deduction claimed was supported by any evidence, and whether those deductions were claimed from before, giving rise to a pre-existing dispute, or whether it was a moonshine defense raised just to defeat the Section 9 petition of O.C., was an issue which ought to have been addressed by NCLAT based on assessment of the evidence on record. More so, when there was no response to the notice given under Section 8. No doubt, if there existed a *bona fide* dispute since before, CIRP proceedings being not one to recover money, the same could also be raised to resist an application under Section 9 of IBC. However, while considering whether there is a genuine pre-existing dispute regarding default of an amount above the threshold, the Adjudicating Authority, while considering the application, as well as NCLAT, while considering the appeal, must examine and determine those aspects based on consideration of the material placed before

them to enable them to take a decision about a pre-existing dispute, if any.

17. In our view, NCLAT has not considered and addressed those aspects in an appropriate manner by referring to the evidence /materials brought on record. Besides, in our view, if NCLAT had required the appellants therein (i.e., the respondents herein) to submit a chart of the invoices raised along with its comments, a similar opportunity ought to have been given to the respondents also, so that it could rebut the data in the chart. Here, we do not find any material on record to show that any such opportunity was provided to the respondents therein i.e., the appellants herein. Even if they had not asked for an opportunity, the same ought to have been provided to them, particularly when chart was invited from the other side by a judicial order.

18. Having regard to the discussion above as also

that the respondent therein (i.e., appellant herein) was not given opportunity to submit a contra chart before NCLAT even though the appellants therein (i.e., the respondents herein) had submitted one under orders of NCLAT, we are of the view that the matter requires reconsideration by NCLAT.

19. Accordingly, the order impugned is set aside. The respondents' appeal, namely, Company Appeal (AT) (Insolvency) No. 656 of 2020, shall stand restored on the file of NCLAT, and shall be decided afresh in accordance with law after giving opportunity of hearing to both sides.

20. As we find that even NCLT had not recorded proper reasons while admitting the petition under Section 9 of IBC, having regard to the fact that NCLAT had set aside the order passed by NCLT, we deem it appropriate to stay the effect and operation of the order passed by NCLT till decision of the appeal by NCLAT.

21. **We also deem it appropriate to request NCLAT to ensure that the appeal is decided expeditiously preferably within a period of four months from the date a certified copy of this order is produced before it.**

22. **The appeal is partly allowed to the extent indicated above.**

23. **Pending application(s), if any, shall stand disposed of.**

……………………………………..J
[MANOJ MISRA]

……………………………………..J
[VIJAY BISHNOI]

New Delhi;
September 09, 2026

ITEM NO.11 COURT NO.10 SECTION XVII-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3542/2020

M/S JAYHIND STEEL TRADERS Appellant(s)

VERSUS

ANSHUL VASHISTHA & ANR. Respondent(s)

IA No. 109641/2020 - EX-PARTE STAY
IA No. 109642/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 109639/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES
IA No. 103576/2026 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 09-09-2026 This matter was called on for hearing today.

CORAM HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE VIJAY BISHNOI

For Appellant(s) Mr. Yashraj Singh Deora, Sr. Adv.
Mr. Keith Varghese, AOR
Mr. Priyesh Srivastava, Adv.

For Respondent(s) Mr. Naveen Pahwa, Sr. Adv.
Mr. Kanu Agrawal, Adv.
Mr. Vijayesh Atre, Adv.
Mr. Aakarshan Aditya, AOR
Mr. Devanshu Agrawal, Adv.

Mr. Vaibhav Joshi, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is partly allowed in terms of the signed order placed on the file.

2. Pending application(s), if any, shall stand disposed of.

(CHETAN ARORA) (SAPNA BANSAL)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)