

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

**Company Appeal (AT) (Insolvency) No. 221 of 2022**

**IN THE MATTER OF:**

**Pramod Kumar Mittal**

**...Appellant**

**Versus**

**UCO Bank**

**...Respondent**

**Present:**

**For Appellant:** Mr. Sandeep Ladda, Mr. Gaurav Singh and Mr. Adnan Ansari, Advocates.

**For Respondent:** Mr. Partha Sil, Mr. Tavish B Prasad, Advocates

**ORDER**  
**(Virtual Mode)**

**18.04.2022:** Heard Learned Counsel for the Appellant as well as the Respondent.

2. This Appeal has been filed against the Order dated 23.09.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) on an Application being CP(IB)/23(KB)2021 filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 by the UCO Bank against the Appellant. By the Impugned Order, the Adjudicating Authority has appointed a Resolution Professional and observed that Resolution Professional shall exercise all the powers enumerated under Section 99 of the I&B Code, 2016. He was directed to make recommendations with the reason in writing. Aggrieved by the order, the Appellant has come in this Appeal.

3. Learned Counsel for the Appellant challenging the Order contends that the Order records a finding of default in paragraph 9 when there was no stage for

recording any finding of default. He further submits that the Demand Notice was not served on the Appellant as is required by the statute.

4. Learned Counsel for the Respondent refuting the submissions of Learned Counsel for the Appellant submits that Appellant has not filed any Reply before the Adjudicating Authority and without filing any Reply before the Adjudicating Authority this Appeal was filed by the Appellant. Learned Counsel for the Appellant submits that after filing of this Appeal, Reply has already been filed where all the issues have been raised.

5. We are of the view that the Application has not yet been admitted or rejected under Section 100 of I & B Code, 2016. The stage has not yet come therefore it shall be open for the Appellant to raise all the issues regarding the admissibility of the Application. In so far as the finding of default as contained in paragraph 9, it is useful to extract the observations in paragraph 9 which is to the following effect:

*“9. The Applicant has clearly brought it out in its application that the personal guarantor has committed default in making payment of the cash credit facility along with interest to the Applicant for which he has given the personal guarantee to the Applicant on behalf of GPIL.”*

6. Learned Counsel for the Respondent submits that the aforesaid observations in paragraph 9 cannot be read as a finding rather in the paragraph 9 the Adjudicating Authority has only noted the contention of the Respondent. Be that as it may, suffice it to say that any observations in paragraph 9 of the

Judgment need not be treated any finding of the default of the Appellant, Adjudicating Authority shall independently without any reference to Paragraph 9 shall consider the question of default while passing order under Section 100 of the I & B Code, 2016. Leaving all the contentions of the parties open, we dispose of this Appeal, accordingly.

**[Justice Ashok Bhushan]  
Chairperson**

**[Ms. Shreesha Merla]  
Member (Technical)**

Basant/nn