



INSOLVENCY & BANKRUPTCY

# NCLT CAN ISSUE NON BAILABLE WARRANT AGAINST PERSON UNDER IBC: NCLAT

**AUTHOR** Shrishail Kittad, Nim Dem Dorjee

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National Company Law Appellate Tribunal (“NCLAT”) in *Vikram Puri vs Universal Builders*<sup>1</sup> held that the adjudicating authority has jurisdiction under Insolvency and Bankruptcy Code 2016 (“IBC”) to issue non-bailable warrant against persons. The decision was made in an appeal filed by the suspended directors of the corporate debtor against the order of National Company Law Tribunal (“NCLT”) rejecting an application to cancel non-bailable warrant issued against the directors.

The matter arose out of an application filed by the resolution professional of the corporate debtor under section 19(2) of the IBC against suspended director for non-corporation. In this application, NCLT passed an order directing the directors to appear before the Registrar and non bailable warrants were also issued against them. Instead of appearing before the Registrar, the directors filed in an interim application for cancellation of non-bailable warrants of arrest, which was refused by NCLT. Appeal was filed against this order.

### **Arguments**

The Appellants submitted that in IBC proceedings, there is no ground to issue a non-bailable warrant. NCLT can proceed ex parte and pass appropriate order against the suspended directors but asking for personal presence of the directors was not required. They argued that NCLT does not have any jurisdiction to issue non-bailable warrants.

Respondent contended that there is ample jurisdiction with NCLT to enforce the attendance of any person in the proceeding. Since the Suspended Directors did not co-operate with the Resolution Professional or supplied the documents, the Adjudicating Authority left with no option but to issue non-bailable warrants.

### **Decision**

While answering the question, whether NCLT has jurisdiction to issue non-bailable warrant against any person or party, NCLAT examined the provisions of the National Company Law Appellate Tribunal Rules, 2016 (“NCLAT Rules”). Rule 77 of the NCLAT Rules which deal with ‘procedure for examination of witnesses’ states that relevant provisions of the Order XVI Rule 10 of Civil Procedure Code will apply in the matter of summoning and enforcing attendance of any person. Order XVI Rule 10 specifically empowers the Court to issue bailable or non-bailable warrant for arrest of person, who without any lawful excuse, failed to attend or to produce the document in compliance with the summons of the Court.

In the present case, NCLAT observed that in spite of several opportunities been given to suspended directors, they refused to appear or provide documents. The provision of Rule 77 of the NCLAT Rules, 2016 read with Order XVI Rule 10 of Civil Procedure Code fully empowers the Adjudicating Authority to issue a non-bailable warrant for enforcing attendance of a person. The power exercised by NCLT in issuing a Non-Bailable Warrant to the Appellants is thus well within its jurisdiction.

<sup>1</sup> *Company Appeal (AT) (Insolvency) No. 1018 of 2021*

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