

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)**

Company Appeal (AT) (CH) (Insolvency)No. 23 of 2021

Under section 61 of Insolvency & Bankruptcy Code)

**(Arising out of Order dated 24.02.2021 in IA No.1094 of 2020 in C.P.(IB) No.153/7/HDB/2019
passed by the Hon'ble National Company Law Tribunal, Bench-I, Hyderabad**

In the matter of:

M/s Renganayaki Agencies,
Successful Resolution Applicant
Represented by Mr.S.Nadesan
"Aachi Illam', No.10/12,
D Silva Road, I Cross Street,
Mylapore, Chennai 600 004

....Appellant

V

Sreenivasa Rao Ravinuthala
Resolution Professional
For Samyu Glass Private Limited
Plot No.6, 3rd Floor, Kavuri Hills,
Phase-1, Jubilee Hills, Hyderabad
Present:

...Respondent

For Appellant : Mr.R.Vidhya Shankar, Advocate
For Resolution Professional : Mr.Aneesh, V., Advocate

J U D G E M E N T

(VIRTUAL MODE)

Venugopal M. J

INTRODUCTION:

The 'Appellant'/Successful Resolution Applicant has filed the present 'Appeal' being dissatisfied with the order dated 24.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in IA No. 1094 /2020 in CP No. 153/7/HDB/2019 (filed by the

‘Appellant/Applicant/Resolution Professional’) under section 36 of the I & B Code, 2016 read with Regulation 39 (4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2. Earlier, the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) while passing the impugned order dated 24.02.2021 had among other things at paragraph 3 and 4 observed the following:

3. “The Resolution Professional has compared both the Resolution Plan submitted by M/s. KALS Group and Mr. Chava Suresh Babu. The Resolution Plan submitted by both the Resolution Applicants were almost equally placed except for the fact that M/s. KALS Group has scored in terms of faster payment of the amount for resolving the Corporate Debtor. However, as both the resolution plans are almost placed equally in terms of the resolution amount payable by the perspective Resolution Applicants and farther unsuccessful Resolution Applicants has filed several interlocutory applications for consideration of their plan. Taking into consideration the almost similarly placed resolution plans and claims and counter claims made by both the Resolution Applicants, we are of the view that there is a need for further pursuance of the Resolution Plan and with the very hope that the Corporate Debtor may fetch better value that what has been offered by the Resolution Applicants. In this case, even though the resolution plan of M/s. KALS Group has been approved with 100% voting in favour of it by the COC, in view of very meagre difference between both the Resolution Plans, we are of the view that there is scope for further improvement of the resolution amount to be payable by the Resolution Applicants.

4. We therefore, accordingly direct the COC to take fresh bids from the existing two Resolution Applicants and submit a fresh resolution plan for our consideration within a period of one month.”

and disposed of the application with above directions.

APPELLANT’S CONTENTIONS:

5. Challenging the validity, legality of the impugned order dated 24.02.2021 in IA No. 1094 /2020 in CP No. 153/7/HDB/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad), the Learned Counsel for the ‘Appellants’ submits that the Adjudicating Authority had committed an error in considering the fact that the ‘Resolution Plan’ of the ‘unsuccessful Resolution Applicants’ were rejected by the ‘Committee of

Creditors' since they had not met the 66% criteria and were denied the right to a second vote by an order dated 17.02.2020, could be given a new lease of life, in the application of the 'Interim Resolution Professional' for the sanction of the Appellant's plan.

6. The Learned Counsel for the Appellant contends that the 'Adjudicating Authority' upon satisfaction that the 'Sanctioned Plan' was compliant with the requirements of section 30(2) of the I & B Code, 2016, was duty bound to sanction the 'Resolution Plan' of the Appellant and in fact, had exceeded its jurisdiction by issuing directions in the 'impugned order' to 'rebid' in an endeavour to maximise the value.

7. It is represented on behalf of the Appellant/Successful Resolution Applicant that the 'Adjudicating Authority' in the 'impugned order' had not rendered a finding that the sanctioned plan was found wanting in regard to any of the requirements under section 30(2) of the I & B Code, 2016.

8. The primordial submission of the Learned Counsel for the Appellant is that the Respondent/Resolution Professional had certified that the 'Sanctioned Plan' was compliant with all the requirements of the I & B Code, 2016 and Regulations and as such, the 'Adjudicating Authority' was statutorily obligated to sanction of the 'Scheme of Appellant'.

9. The Learned Counsel for the Appellant takes a stand that an 'Adjudicating Authority' cannot trespass into the 'Commercial Wisdom' of the 'Committee of Creditors' and indeed, has a restricted power, of course, within the four corners of section 30(2) of the I & B Code, 2016.

10. The Learned Counsel for the Appellant refers to the decision in Shrawan Kumar Agarwal Consortium & others V Rituraj Steel Private Limited & ors reported in (2020) 160 SCL 210 wherein a question arose 'whether the Adjudicating Authority has exceeded its jurisdiction in passing orders rebidding, despite the approval of the Resolution Plan by the 'Committee of Creditors' with a vote share of 84.70%'? and it was held that a direction for rebidding, despite approval of a Resolution Plan by the Committee of Creditors was not valid in Law and that any direction for maximisation of value of the Corporate Debtor also amounts to an interference in the business decision of the Committee of Creditors.

11. The Learned Counsel for the Appellant submits that the Adjudicating Authority in IA No. 1188/2020 in IA No. 1094/2020 in CP (IB) 153/7/HDB/2019

(Filed by the Applicant/Resolution Applicant under section 60(5) of the I & B Code, 2016 on 17.02.2021 passed an order by coming to the conclusion that there cannot be any interference with the decision of the 'Committee of Creditors' and rejected the plan of the 'Unsuccessful Resolution Applicants'. However, few days later i.e., 24.02.2021 an order in IA No. 1094/2020 in CP (IB) 153/7/(HDB)/2019 was passed for 'rebidding' as per the impugned order.

12. It is the version of the Appellant that by means of an order dated 17.02.2021 in IA No. 1188/2020, the Adjudicating Authority had held that the 'Unsuccessful Resolution Applicants' cannot modify their plans and propose additional plan amounts after the voting was concluded by the Committee of Creditors.

13. The grievance of the Appellant is that its plan was approved with an overwhelming 100% of votes and there was no reason commercially or in Law for rejection of its plan by the 'Adjudicating Authority'. In short, the Adjudicating Authority had revived a stale Resolution Plan and directed a fresh bid to be conducted while passing the impugned order dated 224.02.2021 in IA No. 1094/2020 in CP (IB) No. 153/7/HDB/2019.

14. The Learned Counsel for the Appellant brings to the notice of this 'Tribunal' in the present case, the 'Committee of Creditors' with 100% voting share had approved the 'Resolution Plan' submitted by KALS Group and projects a plea that it is the Commercial decision of the Committee Creditors in approving or rejecting a certain Resolution Plan.

RESPONDENT' SUBMISSIONS:

15. The Learned Counsel for Respondent submits that the Adjudicating Authority by passing the impugned order had exceeded its jurisdiction showered on it, under the I & B Code, 2016, by ignoring the decision of the Hon'ble Supreme Court in K. Sashidhar v Indian Overs Seas Bank reported in (2019) SCC Online SC 257.

16. The Learned Counsel for the Respondent contends that the Adjudicating Authority while directing the 'Committee of Creditors' to invite 'fresh bids' had completely lost site of the fact that the other unsuccessful resolution applicants (Mr. Suresh Babu Chava in with Devi Innoventures LLP, secured only 55.58% of the total voting share of the 'Financial Creditors' whereas the Appellant (Successful Resolution Applicant" had secured 100% of the total voting shares of the 'Financial Creditors'.

17. The Learned Counsel for the Respondent points out that the Adjudicating Authority had contradicted its own previous orders passed in IA Nos. 1187,& 1188 /2020 filed by the unsuccessful resolution applicants (Mr. Suresh Babu Chava in with Devi Innoventures LLP). Therefore, a plea is taken on the side of the Respondent that the impugned order is untenable in Law.

HON'BLE SUPREME COURT JUDGMENT:

18. At this juncture, this Tribunal, pertinently points out the judgment of the Hon'ble Supreme Court of India dated 10.03.2021 in Civil Appeal No. 2943-2944/2020 with Civil Appeal Nos.3138-3139 of 2020, Civil Appeal No.2949-2950 of 2020, Civil Appeal No.847-848/2021 (D.No.24125 of 2020) in the matter of Kalpraj Dharamshi & Anr. V. Kotak Investment Advisors Ltd. & Anr. Whereby and where under at Paragraphs 155 to 159, it is observed as follows:

Para 155. "It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.

156. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub-section(3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of

CoC, which is to be taken on the basis of 'commercial wisdom', NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.

157. It is further to be noted, that after the resolution plan of Kalpraj was approved by NCLT on 28.11.2019, Kalpraj had begun implementing the resolution plan. NCLAT had heard the appeals on 27.2.2020 and reserved the same for orders. It is not in dispute, that there was no stay granted by NCLAT, while reserving the matters for orders. After a gap of five months and eight days, NCLAT passed the final order on 5.8.2020. It could thus be seen, that for a long period, there was no restraint on implementation of the resolution plan of Kalpraj, which was duly approved by NCLT. It is the case of Kalpraj, RP, CoC and Deutsche Bank, that during the said period, various steps have been taken by Kalpraj by spending a huge amount for implementation of the plan. No doubt, this is sought to be disputed by KIAL. However, we do not find it necessary to go into that aspect of the matter in light of our conclusion, that NCLAT acted in excess of jurisdiction in interfering with the conscious commercial decision of Coc.

158. It is also pointed out, that in pursuance of the order dated 5.8.2020 passed by NCLAT, CoC has approved the resolution plan of KIAL on 13.8.2020. However, since we have already held, that the decision of NCLAT dated 5.8.2020 does not stand the scrutiny of law, it must follow, that the subsequent approval of the resolution plan of KIAL by CoC becomes non-est in law. For, it was only to abide by the directions of NCLAT. We are of the view that nothing would turn on it. The decision of CoC dated 13/14.2.2019 is a decision, which has been taken in exercise of its 'commercial wisdom'. As such, we hold, that the decision taken by CoC dated 13/14.2.2019, which is taken in accordance with its 'commercial wisdom' and which is only approved by NCLT, will prevail. Further, NCLAT was not justified in interfering with the stated decision taken by CoC.

159. In that view of the matter, we find, that Civil Appeal Nos.2943-2944 of 2020 filed by Kalpraj: Civil Appeal Nos.2949-2950 of 2020 filed by RP and Civil Appeal Nos.3138-3139 of 2020 filed by Deutsche Bank deserve to be allowed. It is ordered accordingly. The order passed by NCLAT dated 5.8.2020 is quashed and set aside and the orders passed by NCLT dated 28.11.2019 are restored and maintained”

APPRAISAL:

19. On a careful consideration of the submissions advanced on either side, this ‘Tribunal’ after going through the impugned order dated 24.02.2021 in IA No. 1094/2020 in CP (IB) No. 7/HDB/2019 inter alia to the effect that ... “we are of the view that there is a need for further pursuance of the resolution plan and with the very hope that the Corporate Debtor may fetch better value that what has been offered by the Resolution Applicants. In this case, even though the Resolution Plan M/s. KALS Group has been approved with 100% voting in favour of it by the Committee of Creditor in view of the very meagre difference between both the resolution plant, we are of the view that there is scope for further improvement of the Resolution amount to be payable by the Resolution Applicants’ and the direction issued to the Committee of Creditors to take fresh bids from the existing two Resolution Applicants to submit a Resolution Plan for its consideration within a period one month” are clearly unsustainable in view of the recent judgment of the Hon’ble Supreme Court in Kalpraj Dharamshi & Anr. V. Kotak Investment Advisors Ltd. & Anr dated 10.03.2021, which squarely applies to the facts of the present case. Viewed in that perspective, this Tribunal interferes with the impugned order dated 24.02.2021 passed by the Adjudication Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) In I A No. 1094/2020 in CP No (IB) No. 153/7/HDB/2019 and sets aside the same, in furtherance of substantial cause of justice. Consequently, the Appeal succeeds.

CONCLUSION:

In fine, the instant Comp App (AT) (CH) (INS) No. 23/2021 is allowed. No costs. The 'Adjudicating Authority' (National Company Law Tribunal, Bench-I, Hyderabad) is to approve the 'Resolution Plan' approved by the "Committee of Creditors' with 100% voting in favour of 'KALS Group'. I A No. 53/2021 (stay application) I A No. 54/2021 (for urgent hearing) are closed.

**(Justice Venugopal M.)
Member(Judicial)**

19th April, 2021

**(V. P. Singh)
Member(Technical)**

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