

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 522 of 2020

[Arising out of Order dated 28th January, 2020 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 704/2019 in CP(IB)No.64/Chd/Hry/2018]

IN THE MATTER OF:

Singh Raj Singh

House No. 45, Atta Gunpura,

Dhankaur, Greater Noida,

Uttar Pradesh, 0203201

...Appellant

Versus

- I. SRS MEDITECH LIMITED
(Undergoing Corporate Insolvency
Resolution Process)
Plot No-08, Sector -05, Main Mathura Road,
Ballabgarh, Haryana-121001 ...Respondent No. 1/CD
- II. Mr. Tarun Batra
Resolution Professional,
SRS Meditech Limited,
R/o 1085, Sector 6,
Karnal, Haryana 132001.
e.mail: batratarun@gmail.com ...Respondent No. 2
- III. Vaibhav Build Tech Private Limited
Resolution Applicant
3/199, Vidhyak Puram,
Vinay Khand, Gomti Nagar,
Lucknow-226010.
E.mail: ava_ca@rediffmail.com ...Respondent No. 3
- IV. State Bank of India
SME Branch, Sector 18, Noida,
Gautam Budh Nagar, U.P. 201301,
E.mail: sbi.04077@sbi.co.in ...Respondent No. 4
- V. United Petro Finance Limited
Naman Midtown "A" Wing, Unit No. 2103,
21st Floor, SenapatiBapat Marg,
Elphinstone Road, Mumbai 400013.
E.mail: info@itiorg.com ...Respondent No. 5

- VI. Bajaj Finance Limited
3rd Floor, Panchshil Tech Park,
Plot 43/1, 43/2 & 44/2,
Viman Nagar, Pune 411014 Maharashtra
E.mail: vijay.r@bajajfinserv.in ...Respondent No. 6
- VII. Oxyzo Financial Services Private Limited
Shop No. G - 22 C (UGF) D-1 (K-84)
Green Park Main New Delhi 110016
ALSO AT
101, First Floor Vipul Agora Mall,
MG Road Gurgaon 122002 Haryana,
e.mail: finance@oxyzo.in ...Respondent No. 7
- VIII. Epimoney Private Limited
249A, Ambujammal St Off TTK Road,
Alwarpet Chennai, Tamil Nadu 600018
ALSO AT
New Era Mills Compound, Mogul Lane,
Matunga (W) Mumbai 400016,
E.mail: anil.jaggia@epimoney.com ...Respondent No. 8
- IX. Siemens Financial Services Private Limited
Plot No. 2, Sector No. 2, Kharghar Nod,
Navi Mumbai Raigarh Maharashtra 410210,
E.mail: sfs.compliance.in@siemens.com ...Respondent No. 9
- X. Hero Fincorp Limited
34, Community Centre, Basant Lok
Vasant Vihar New Delhi 110057
ALSO AT
9 Community Centre, Basant Lok,
Vasant Vihar New Delhi 110057,
e.mail: investors@herofincorp.com ...Respondent No. 10
- XI. Dewan Housing Finance Corporation Limited
Warden House 2nd Floorsir P M Road,
Fort Mumbai 400001
E.mail: secretarial@dhfl.com ...Respondent No. 11.

- XII. Edelweiss Retail Finance Limited
Tower 3, Wing B, Kohinoor City Mall,
Kohinoor City Kirol Road,
Kurla(W) Mumbai City 400070
E.mail: CS.CBG@edelweissfin.com ...Respondent No. 12
- XIII. Equitas Small Finance Bank Limited
4th Floor, Spencer Plaza, No. 769,
Phase II, Anna Salai Chennai – 600002
E.mail: secretarial@equitas.in ...Respondent No. 13

Present:

For Appellant: **Mr. ArunSaxena, Sr. Advocate with Ms. Nalini and Mr. Shivam Mishra, Advocates.**

For Respondents: **Mr. Sumesh Dhawan, Mr. Tarun Batra and Ms. Geetika Sharma, Advocates for R-2. Ms. Vatsala Kak and Mr. Apoorva Choudhary, Advocates for R-3**

J U D G M E N T

BANSI LAL BHAT, J.

This Appeal has been preferred by a member of the suspended Board of Directors of M/s SRS Meditech Limited and Ors. (for short the ‘Corporate Debtor’) assailing approval of the Resolution Plan of Vaibhav Build Tech Private Limited (Respondent No.3/ Successful Resolution Applicant) the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench, Chandigarh (for short ‘Adjudicating Authority’) primarily on the ground that the networth criteria, which was crucial, was overlooked and certificate produced by the Respondent No.3 in regard to its networth was fraudulent and sham which vitiated the whole exercise and approval of said Resolution Plan.

2. Before dwelling upon the grounds on which the approval of Resolution Plan has been assailed, it would be appropriate to briefly advert to the factual matrix of the case. The Adjudicating Authority admitted Application under Section 9 of Insolvency and Bankruptcy Code, 2016 (for short 'IBC') filed by an Operational Creditor viz Durga Enterprises. It happened on 2nd November, 2018. Subsequently Interim Resolution Professional (for short 'IRP') came to be appointed on 15th November, 2018. Corporate Insolvency Resolution Process was set in motion with public announcement made by the IRP inviting Expression of Interest from prospective Resolution Applicants. Committee of Creditors was constituted which approved the eligibility criteria of networth of Rs.5 crores for submission of Resolution Plan along with the evaluation matrix as proposed by the Resolution Professional. Respondent No.3 initially submitted networth certificate dated 1st October, 2018 but realizing that there was an error in the certificate, submitted a revised networth certificate dated 15th March, 2019, which was placed before the Committee of Creditors. Thereafter, Resolution Plans were invited from the prospective Resolution Applicants. Respondent No.3 submitted its Resolution Plan which was presented before the Committee of Creditors in its 7th meeting held on 24th July, 2019. The Committee of Creditors advised Respondent No.3 to revise the Resolution Plan on financial terms and also fix timelines of recovery from government institutions. A revised Resolution Plan came to be filed by Respondent No.3 on 27th July, 2019, which was placed before the Committee of Creditors meeting held on 31st July, 2019. E-voting was conducted on 7th and 8th August, 2019. The

revised Resolution Plan submitted by Respondent No.3 was approved by Committee of Creditors with 92.65% voting. Subsequently the approved resolution Plan was placed before the Adjudicating Authority who approved the same in terms of the impugned order which has been assailed in this Appeal. It is apt to notice that subsequently Appellant filed CA 67/2020 before the Adjudicating Authority seeking recall of the impugned order. Same was dismissed by the Adjudicating Authority.

3. Assailing the impugned order learned Counsel for the Appellant submitted that the Resolution Professional had accepted the bid of Respondent No.3 despite the fact that Respondent No.3 did not comply with the networth eligibility as evident from the networth certificate submitted by Respondent No.3. Thus, provisions of Section 25(2)(h) of IB Code were violated. It is submitted that this important and crucial aspect was completely ignored by Respondent No.2 and the Committee of Creditors while approving Resolution Plan of Respondent No.3. It is further submitted that Respondent No.3 had submitted a back dated networth certificate from Anish Verma & Associates showing the networth as Rs.637.40 lakhs as on 31st August, 2018 but the certificate had clubbed the networth of Respondent No.3 with another company viz JSV Motors & Construction Pvt. Ltd. though JSV Motors and Constructions Pvt. Ltd. was not a Resolution Applicant either singly or jointly with Respondent No.3. It is further submitted that the networth certificate is not in accordance with the provisions of the Companies Act, 2013. It is further pointed out that the networth of Respondent No.3 as on 31st March, 2018 and 2019 was only 24.65 lakhs and 2.93 crores respectively,

which was much less than the eligibility criteria of Rs.5 crores. The learned Counsel for the Appellant also submitted that Regulation 35 of the (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 has been violated as the valuers only asked to calculate liquidation value of plant and machinery and not entire assets of Corporate Debtor. It is submitted that Respondent No.2 failed to get the valuation of fixed assets properly and the current assets including receivables were not included in valuation. It is further submitted that the Resolution Professional as also the Committee of Creditors failed to ensure maximization of value of the assets of the Corporate Debtor and the approved Resolution Plan of Respondent No.3 contravenes provisions of law.

4. It is submitted on behalf of Respondent No.2 – Corporate Debtor that the Appellant has no locus-standi as he had not raised any objection during Corporate Insolvency Resolution Process and in reply to CA No.703 the Appellant had contended that he had been falsely arrayed and shown as Director of Corporate Debtor while he had been attending the CoC meetings only to secure the release of his properties mortgaged with the Banks. It is further submitted that the valuation of the assets of the Corporate Debtor has been conducted in accordance with the provisions of the IB Code and Regulations with two Registered Valuers appointed to determine the fair value and liquidation value of the Corporate Debtor. It is further submitted that upon noticing the error in the networth certificate submitted by Respondent No.3 clarification was sought by CoC from Respondent No.3 who immediately submitted a revised networth

certificate dated 15th March, 2019 to the RP, which was placed before the CoC for consideration and Resolution Plan submitted by Respondent No.3 was approved by CoC only after consideration of the revised networth certificate submitted by Respondent No.3. It is submitted that the plant and machinery of the Corporate Debtor had been set on fire and a complaint in this regard had been lodged against the Appellant, who had been arrested by Police and is presently on bail. It is submitted that the criminal case is pending determination before learned Session Judge, Gautam Buddh Nagar, Uttar Pradesh.

5. Refuting the contentions of Appellant learned Counsel for the Successful Resolution Application/ Respondent No.3 submitted that reflection of name of JSV Motors & Construction Pvt. Ltd. in the networth certificate dated 1st October, 2018 submitted by Respondent No.3 was nothing but an inadvertent error caused due to a typographical mistake and the amount of Rs.637.40 lakhs mentioned as networth of Respondent No.3 did not include networth of any other Company. Immediately upon learning that an error had occurred, Respondent No.3 submitted a revised networth certificate dated 15th March, 2019, which was subsequently placed before the CoC. It is further submitted that it is only after the CoC, upon consideration accepted the eligibility of Respondent No.3 that negotiations on financial terms of the Resolution Plan were conducted. It is further submitted that CoC approved the Resolution Plan submitted by Respondent No.3 with about 93% of the voting shares. The approved Resolution Plan is in the process of implementation and out of total value of Rs.22.10 crores Respondent No.3 has already deposited an amount of

Rs.30 lakhs being 5% of the cash contribution of the Resolution Plan and has already made an upfront payment of Rs.3 crores out of total contribution of Rs.6.10 crores besides making investment of Rs.4.55 crores on building infrastructure. It is submitted that the Appellant has no locus standi with respect to valuation of the assets of the Corporate Debtor and commercial wisdom of CoC and the decision of the Adjudicating Authority cannot be assailed by the Appellant on this aspect.

6. Heard learned Counsel for the parties and waded through the record. It is not in dispute that as per eligibility criteria laid down by the CoC the Resolution Applicant was required to have a networth of Rs.5 crores. Appellant is aggrieved of acceptance of bid of Respondent No.3 on the score that the Respondent No.3 did not comply with the networth eligibility. In this regard, it is pointed out that the networth certificate dated 1st October, 2018 shows the networth of Rs.637.40 lakhs as on 31st August, 2018 qua M/s. Vaibhav Build Tech Pvt. Ltd., JSV Motors & Constructions Pvt. Ltd. (page 91 of Appeal paper book). According to learned Counsel for the Appellant the certificate records the networth of two companies, including Respondent No.3, without specifying their relationship. It is submitted that the networth of Respondent No.3 was barely 2.93 crores at the relevant time when computed in terms of provisions of Companies Act and the Resolution Professional accepted the bid of Respondent No.3 inspite of Respondent No.3 not complying with the eligibility criteria as regards networth. It is further contended that this eligibility criteria in regard to networth was ignored by the Resolution Professional as also by the Committee of Creditors while approving

Resolution Plan of Respondent No.3. It is not in controversy that Respondent No.3 had submitted a revised networth certificate. Respondent No.3 has come up with an explanation in this regard. It is submitted that in the networth certificate dated 1st October, 2018 the name of JSV Motors & Construction Pvt. Ltd. got reflected on account of an inadvertent error due to a typographical mistake and the amount of Rs.637.40 lakhs mentioned as networth of Respondent No.3 did not include networth of any other company. It is seen from record that Respondent No.3 has, upon discovering such error, submitted a revised networth certificate dated 15th March, 2019. It is absurd on the part of the Appellant to suggest that a back dated networth certificate was surreptitiously placed on record without disclosing the actual date of submission as the defective certificate had been issued on 1st October, 2018 whereas the revised certificate, subsequent to discovery of error/mistake, was issued on 15th March, 2019. Resolution Professional is stated to have presented the same before Committee of Creditors, which in its meeting dated 24th July, 2019, after considering the eligibility of Respondent No.3, negotiated on the financial terms of Resolution Plan in question, which was duly approved by CoC with 93% of the voting shares. It is brought to our notice that the Appellant has participated in Committee of Creditors' meeting during CIRP process but never raised the issue with regard to the eligibility of Respondent No.3 as regards networth criteria. It is too late in the day to accept the argument emanating from the Appellant that the networth of the Resolution Applicant calculated on the basis of market value of fixed assets minus secured loans is not in

accordance with the definition of networth under Section 2 (57) of the Companies Act, 2013. No objection to calculation having been raised at the relevant time and the criteria adopted for arriving at the conclusion in regard to networth not being shown to be fundamentally flawed and perverse, argument raised on this score is repelled. No objection on this score can be permitted to be raised by the Appellant after the Resolution Plan has been approved by the Committee of Creditors with huge majority of voting share.

7. Objection in regard to valuation conducted by the Resolution Professional and approved by the Committee of Creditors is equally without substance. It is not disputed that two registered Valuers were appointed to determine fair value and liquidation value of the Corporate Debtor. Such valuation reports were placed before Committee of Creditors which in its 6th meeting held on 18th July, 2019 considered the same before approving the Resolution Plan. In **“Maharashtra Seamless Ltd. vs. Padmanabhan Venkatesh & Ors. - Civil Appeal 4242 of 2019”** decided on 22nd January, 2020, Hon’ble Apex Court observed that the object behind carrying out valuation of the assets of the Corporate Debtor is to assist the Committee of Creditors to take decisions on a Resolution Plan. It was further held that there is no requirement that the Resolution Plan should match the maximized asset value of the Corporate Debtor. Relevant extract from the judgment is reproduced herein below: -

“25. Now the question arises as to whether, while approving a resolution plan, the Adjudicating Authority could reassess a resolution plan approved

by the Committee of Creditors, even if the same otherwise complies with the requirement of Section 31 of the Code. Learned counsel appearing for the Indian Bank and the said erstwhile promoter of the corporate debtor have emphasised that there could be no reason to release property valued at Rs.597.54 crores to MSL for Rs.477 crores. Learned counsel appearing for these two respondents have sought to strengthen their submission on this point referring to the other Resolution Applicant whose bid was for Rs.490 crores which is more than that of the appellant MSL.

*26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of **Essar Steel (supra)**. We have quoted above the relevant passages from this judgment.*

27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.”

8. The dictum of Hon'ble Apex Court in **"Hon'ble Apex Court in K. Shashidhar vs. Indian Overseas Bank and Ors. reported in (2019) SccOnline SC 257"** is loud and clear. The commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the resolution process within the timelines prescribed by IBC. Judicial review of a Resolution Plan approved by the CoC is limited as laid down in **"Committee of Creditors of Educomp Solutions Ltd. vs. Ebix Singapore Pte. Ltd. & Anr."**

9. Implementation of the approved Resolution Plan is underway. Respondent No.3 is stated to have already deposited an amount of Rs.30 lakhs being 5% of cash contribution of the Resolution Plan having total value of Rs.22.10 crores. An upfront payment of Rs.3 crores besides investment of Rs.4.5 crores on building infrastructure for setting up plant and machinery for the Corporate Debtor is said to have been made by Respondent No.3. It has been brought to our notice that the plant and machinery of the Corporate Debtor had been set ablaze and a criminal case stands registered against the Appellant and is pending judicial determination before learned Sessions Judge, Gautam Buddh Nagar, Uttar Pradesh. Admittedly, the Appellant is an Ex-Director of the Corporate Debtor and the law does not enjoin upon him any right or power to challenge the commercial wisdom of Committee of Creditors in regard to approval of Resolution Plan, which has already got the approval of Adjudicating Authority and is undergoing implementation. The Appellant cannot be permitted to scuttle the process at this stage and that too without substantial grounds. No material irregularity in

resolution process vitiating it, has been canvassed or brought to our notice, which would render the whole exercise unsustainable.

10. For the foregoing reasons, we are of the considered opinion that the impugned order does not suffer from any legal infirmity or factual frailty. The Appeal lacks merit and is accordingly dismissed. No order as to costs.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[V. P. Singh]
Member (Technical)

New Delhi

7th October, 2020.

Ash