

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 844 of 2019

[Arising out of Impugned Order dated 02nd July 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Chennai Bench, Chennai in M.A. No. 518 of 2018 in CP/540/IB/2018 and Order dated 11th October 2019 passed in M.A. No.927 of 2019 in M.A. No.651 of 2019 in CP/540/IB/2018]

IN THE MATTER OF:

**S. Rajendran, Resolution Professional
In the matter of PRC International
Hotels Private Limited
2nd Floor, Evalappan Mansion
No.188/87, Habibullah Road
(Near Kodambakkam Railway Station)
T. Nagar, Chennai – 600 017**

...Appellant

Versus

- 1. S. Mukanchand Bothra (Deceased)
Represented through its legal heirs
Respondent Nos.2 to 4 herein** **...Respondent No.1**
- 2. M. Karishma Bothra
D/o Late Shri S. Mukanchand Bothra** **...Respondent No.2**
- 3. M. Gagan Bothra
S/o Late Shri S. Mukanchand Bothra** **...Respondent No.3**
- 4. M. Sandeep Bothra
S/o Late Shri S. Mukanchand Bothra** **...Respondent No.4**

**All Resident of No. 8/48, Vijayaragava Road
T. Nagar, Chennai – 600 017**

Present:

**For Appellant : Mr D. Sreenivasan, Mr Avrojyoti Chatterjee,
Mr Rajiv S. Roy, Mr Udayan Agarwal and
Ms Jayasree Saha, Advocates**

For Respondent : Appearance not marked

With
Company Appeal (AT) (Ins.) No. 1275 of 2019

IN THE MATTER OF:

1. **M. Karishma Bothra**
D/o Late Shri S. Mukanchand Bothra **...Appellant No.1**
2. **M. Gagan Bothra**
S/o Late Shri S. Mukanchand Bothra **...Appellant No.2**
3. **M. Sandeep Bothra**
S/o Late Shri S. Mukanchand Bothra **...Appellant No.3**

**All three at No. 44, Veerappan Street
Sowcarpet, Chennai – 79**

Versus

1. **M/s Sai Baba Business Solutions Pvt. Ltd.**
Rep. by V. Subramanyam Naidu
No.46, Dr B.N. Road
2nd Street, T. Nagar, Chennai – 600 017 **...Respondent No.1**
2. **S. Rajendran, Resolution Professional**
In the matter of PRC International Hotels
Private Limited
71/1, Mc Nicholas Road, Chetpet
Chennai – 600 031 **Respondent No.2**

Present:

For Appellant : Appearance not marked

**For Respondent : D. Sreenivasan and Mr G. Ananda Selvam, Advocates
for R-2.
Mr G. Suvin Kumaran, Advocate for R-1.**

J U D G M E N T

[Per; V. P. Singh, Member (T)]

This Appeal, No 1275 of 2019, emanates from the Order dated 11th October 2019 passed in M.A. No.927 of 2019 in M.A. No.651 of 2019 in connection with CP/540/IB/2018 by the Adjudicating Authority/National

Company Law Tribunal, Chennai Bench, Chennai whereby the Adjudicating Authority has issued direction for paper publications in the newspaper as prescribed in the Order, i.e. Hindu (English newspaper) in All India Edition and vernacular Dinamalar in Tamilnadu Edition. The Parties are represented by their original status in the main petition for the sake of convenience.

2. Brief facts of the case are as follows:

The Appellant contends that their father Late Mr S. Mukanchand Bothra being a Financial Creditor filed a claim to the tune of Rs.15 Crores which was challenged before the Adjudicating Authority, Chennai. During the pendency of this petition, on 17th April 2019, Mr Mukanchand Bothra expired, and the Appellants were impleaded as their legal heirs vide Order passed in M.A. No.441/2019.

3. After that a Resolution Plan was approved by NCLT, Chennai Bench vide Order dated 27th August 2019 in M.A. No.651 of 2019 a sum of Rs.4,12,95,002/- was allotted to the share of late Mukanchand Bothra, out of his claim Rs. 15 Crores.

4. The Appellants further contends that after approval of Resolution Plan when the second applicant had gone to the Resolution Professional office seeking to know the procedure of receiving the money, then the Resolution Professional started asking for a copy of the will, probate order, succession certificate etc. and also asked to get the direction of NCLT to release the money. Hence the applicant had to rush to the NCLT again. The M.A.

No.927 of 2019 was filed by the Appellant, which was decided by an order on 26th September 2019. Applicant further alleged that the Resolution Professional submitted a Memo, dated 04th October 2019 before the Adjudicating Authority with all false information. After the transfer of the then Judicial Member to Delhi, the new bench of the NCLT/the Adjudicating Authority modified the earlier Order. In contrast, review or modification is not permissible under IBC. Therefore, the Appellant has challenged the Order of the Adjudicating Authority passed in M.A. No.927 of 2019 on 11th October 2019.

5. This Appeal has filed mainly on the ground by the Adjudicating Authority has no power to review its Order. The Adjudicating Authority cannot review the earlier Order or reopen the case unless it appears that there is an arithmetical error apparent in the previous Order.

6. During the pendency of the main Application challenging the rejection of the claim, the Respondent No.2, the Resolution Professional, had filed its Reply and pending that Mukanchand Bothra died. After that, an application for substitution of their names was filed by the Appellants, stating that they are the legal heirs of late Sri Mukanchand Bothra. Based on the substitution application, the appellants were impleaded as legal heirs of Mukanchand Bothra.

7. After the approval of Resolution Plan, the second Appellant approached the Resolution Professional for releasing the amount of his share, out of the share of Late Mukanchand Bothra. The appellants filed an

application M.A. No.927 of 2017 without submitting any proof of succession i.e. the will, succession certificate and probate and for seeking his one-third share from the amount due to Late Mukanchand Bothra. It is further contended by the RP that it has come to his notice that the mother of appellants was alive, but she did not want a share. After that, the Appellants filed an affidavit stating that their mother has attained sainthood.

8. It is further contended by the Resolution Professional that publication was to be made once in Tamil daily, Dinamalar in Tamil Nadu and another in English Edition of Hindu Newspaper in All India edition. The Appellants were directed to deposit the cost of publication on the same day. The Appellants refused to pay the publication cost and sent an email dated on 27.09.2019 stating that the matter was mentioned before the Adjudicating Authority and direction was given to the second Respondent to make a publication on behalf of the second Respondent. The alleged order of the Adjudicating Authority was never submitted by the second Appellant.

9. It is further contended that the Order passed by the Adjudicating Authority on 11th September 2019 cannot be treated modification, review or recall of the earlier Order.

10. It is further contended that the Order 27th August 2019 was never closed. Therefore it cannot be said that earlier Order has been modified.

11. Question of law that arises for our consideration is as under:

1. Whether the Adjudicating Authority has reviewed or recalled or modified its earlier Order without any authority?
2. Whether the Adjudicating Authority was correct in directing the appellants to cause individual newspaper publications to receive the claim amount when the appellants were already impleaded in the case as legal heirs of Late Mukunchand Bothra?

12. We have heard the arguments of the Learned Counsel for the parties and perused the records.

13. On perusal of the record it is clear that the father of the appellants Late Mukanchand Bothra filed its claim of Rs. 15 Core, in Form 'C', as Financial Creditor before the Resolution Professional. During the pendency of the petition Mukanchand Bothra expired and, Misc. Application No. 518/2018, was filed on behalf of Appellants as legal heirs of Late Mukanchand Bothra for substitution of their names, in place of Late Mukanchand Bothra. This Application was allowed by Order of the Adjudicating Authority dated 03rd May, 2019.

14. In the said Order, it is stated that "**Counsel for RP is present. Applicant No.3 is present, filed Application for bringing on record the legal heirs of Mr S. Mukanchand Bothra, who expired during the pendency of MA/518/2018. The Counsel for RP has no objection to the same. Therefore, the Application is allowed. The legal heirs of Mr. S. Mukanchand Bothra, viz., Applicants 2 to 4 are hereby brought on**

record as Applicants. *The cause title of MA/518/2018 shall be amended by the Applicants. Accordingly, the Application stands disposed of.*”

15. On perusal of the above Order, it is clear that at the time of substitution of the names of the legal heirs of Late Mukanchand Bothra, counsel **for the Resolution Professional has given his consent and has stated that “RP has no objection to the same”**.

16. It is also on record that the Resolution Plan was finally approved by the Adjudicating Authority vide its Order dated 27th August 2019.

17. Para 5 of the approved Resolution Plan deals with the distribution of money to the appellants, which is as follows:

“5. In pursuance of the same, the Resolution Professional has stated that initially, the Resolution Applicant has proposed to pay a sum of Rs.7,80,73,544/- towards the claims of the Unsecured Financial Creditors which constitute 90% payout of the admitted claims. After the admission of the claim of the Mr Mukanchand Bothra and Mr Jonathan Muralidharane by this Tribunal, the Resolution Applicant has proposed to pay the said sum of Rs.7,80,73,544/- to all the Unsecured Financial Creditor with 27.53% payout. The details of the same are as follows:

<u>Payout to Unsecured Financial Creditors</u>			
Name	Amount Admitted	90% Payout	27.53% Payout
4 You Tradex	4,47,11,012	4,02,39,911	1,23,08,942

Mr Gagan Bothra	2,33,66,000	2,10,29,400	64,32,660
Viva Entertainment	88,80,603	79,92,543	24,44,830
Switzer Instrument Pvt. Ltd.	69,68,767	62,71,890	19,18,502
Mr KR Jaganathan	28,22,000	25,39,800	7,76,897
Mr. Mukanchnd Bothra	15,00,00,000	-	4,12,95,002
Mr J. Muralidharane	4,68,46,027	-	1,28,96,712
Total	28,35,94,409	7,80,73,544	7,80,73,544”

18. Thus, it is clear that out of the claim of Rs.15 Crores submitted by Mukanchand Bothra, only claim of Rs.4,12,95,002/- was allowed to his share. It is undisputed facts after the death of Mukhanchand Bothra his legal heirs, i.e. Appellants had been substituted in place of Late Mukhanchand Bothra. As per approved Resolution Plan Rs.4,12,95,002/- comes to the shares of Late Mukhanchand Bothra. Therefore, all the appellants are entitled to one-third share, from the amount which was allotted in favour of Late Mukhanchand Bothra. This resolution plan has become final, and the adjudicating Authority has substituted the names of the appellants as legal heirs of late Mukhanchand Bothra. Therefore, any demand for succession certificate, Probate order at this stage is without any basis. Since the approved resolution plan is binding on all the stakeholders. Therefore the resolution professional has no right to again raise the issue of succession from the appellants at the time of distribution of amount.

19. It is contended that the Appellants have not complied with the Order of the Adjudicating Authority. Therefore, the Order dated 11th September

2019 cannot be treated as recall, review or modification of earlier Order. It is further said that the adjudicating Authority has exercised its powers under Rule 11 of the NCLT Rule.

20. It is pertinent to mention that by the impugned Order the Adjudicating Authority has neither modified or reviewed its earlier Order. But the Order for publication of notice in the newspaper is without any justification because legal heirs of Late Sri Mukanchand Bothra was already on record.

21. The Learned counsel for the Resolution Professional submits that this fact has come to his knowledge that the mother of the Appellants was alive, but this was suppressed by the Appellants. When this fact was submitted to the Adjudicating Authority, then the Adjudicating Authority directed the Appellants to bring their mother along with an affidavit. But the Appellants informed that their mother had attained sainthood. The Adjudicating Authority refused to accept the affidavit filed by them and passed the Order on 26th September 2019 for publication of notice in a newspaper having All India Circulation.

22. On perusal of entire record; it remains undisputed that the Resolution Plan was approved by the Adjudicating Authority and the names of legal heirs of late Mukanchand Bothra was already substituted by Order of the Adjudicating Authority, with the consent of the Resolution Professional. Therefore there was no occasion to demand succession certificate, Probate

Order from the Appellants at the time of distribution of money as per approved Resolution Plan,

23. It is thus clear that the Appellants are entitled to the share allotted to Late Mukanchand Bothra. No further proof of succession is needed by the Resolution Professional from the legal heirs, whose names had been substituted in place of Mukanchand Bothra. Thus, the Appeal deserves to be allowed.

CA No. 844 of 2019

This Appeal emanates from the Order dated 02nd July, 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Chennai Bench, Chennai in M.A. No. 518 of 2018 in CP/540/IB/2018, whereby the Adjudicating Authority has directed the applicants to treat the applicants at par with other unsecured financial creditors and make the appropriate provisions for payment, to which they are entitled, in consultation with the Committee of Creditors and the Resolution Applicant, and file the supplementary affidavit to that effect before the Learned Adjudicating Authority.

In compliance of the above Order, the Adjudicating Authority has directed the Resolution Professional to withdraw the Resolution Plan and constitute the CoC afresh to get the Resolution Plan approved with suitable modifications, as may be required.

2. It is pertinent to mention that in compliance of Order dated 2nd July 2019 resolution plan was amended and revised Resolution Plan has been approved by the CoC after that by the Adjudicating Authority. The approved Resolution Plan dated 27th August 2019 is not under challenge. Therefore this Appeal has become infructuous. Since the approved Resolution Plan is not challenged and has been implemented. Therefore, this Appeal deserves to be rejected as infructuous.

3. The Resolution Professional has filed this Appeal against the Order dated 02nd July, 2019 and the Appeal has been filed by the Resolution Professional on 13th August, 2019. Section 61 of the Insolvency and Bankruptcy Code, 2016 provides that any person aggrieved by the Order of NCLT may prefer and appeal within 30 days. Hence, under Section 61, limitation cannot be calculated from the date of receipt of the certified copy of the Order but is calculated from the date of passing of the Order. It is pertinent to note that no Application for Condonation of Delay was filed explaining the delay. However, Resolution Professional cannot be termed as an aggrieved person. This Appellate Tribunal in CA No.1018 of 2018 dated 01st October 2019 has dismissed the Appeal filed by Resolution Professional as not maintainable because Resolution Professional cannot be treated as an aggrieved person. It is also important to mention that after approval of the Resolution Plan by CoC, the Resolution Professional himself filed an Application for approval of Resolutions Plan, which was allowed by Order of the Adjudicating Authority dated 27th August 2019. Therefore, on this ground also Appeal fails.

ORDER

Appeal No. 1275 of 2019 is allowed. Resolution Professional is directed to comply with the conditions of the approved Resolution Plan. It is also to be clarified there is no need of asking any proof of succession from the legal heirs of Late Mukanchand Bothra. The Order of the Adjudicating Authority is modified to this extent.

The Appeal No 844 of 2019 is rejected. No order as to costs.

[Justice Venugopal M.]
Member (Judicial)

[V. P. Singh]
Member (Technical)

[Alok Srivastava]
Member (Technical)

NEW DELHI
15th JUNE, 2020

pks/nn