

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Ins) No. 17 of 2019

[arising out of Order dated 19th December, 2018 by NCLT, Chennai in MA /639/2018 in CP/709/IB/2018]

IN THE MATTER OF:

Smt. K. Bharathi

Residing at HO-3, 47-01-08/19
4th Floor, Pavan Heights Apartments,
Danvaipeta, Rajahmundry – 533 103

... Appellant

Versus

1. Kotak Mahindra Bank Limited

No. 39. I Floor, Ceebros Center
Montieth Road, Egmore,
Chennai – 600 008

2. Green Gardens Private Limited

Having its registered office at
No. 60, Mount Road, Chennai – 600 006

3. Gemini Arts Private Limited

Having its registered office at
No. 60, Mount Road, Chennai – 600 006

4. Nurani Subramanian

Suryanarayanan

Resolution Professional
Reg. No. (IBBI/IPA-002/IP-N00379/2017-
2018/11122), Flat V II, Silver Palm
Apartments, 340/1 Bajanakoil Street, Padi,
Chennai- 600 050

5. A. Manohar Prasad

Represented by the Official Assignee
Promoter-Green Gardens Private Limited
I Floor, Family Court Building,
High Court Complex, Madras High Court,
Chennai- 600 104

...Respondents

Company Appeal (AT)(Ins) No. 18 of 2019

[arising out of Order dated 19th December, 2018 by NCLT, Chennai in MA /667/2018 in CP/710/IB/2018]

IN THE MATTER OF:**Smt. K. Bharathi****...Appellant****Versus****Kotak Mahindra Bank Ltd. & 4 Ors.****...Respondents****Present:**

For Appellant: Mr. Debal Kumar Bannerji, Senior Advocate with
Mr. Raghav Mehrotra, Mr. Gautam Singh and
Mr. Samur Ali Khan, Advocates

For Respondent: Mr. E. Om Prakash, Senior Advocate with
Mr. Sanjay Bhatt, Ms. D. Sreenivas, Mr. Akashit Kapoor
and Ms. Srishti Kapoor, Advocates

J U D G M E N T**SUDHANSU JYOTI MUKHOPADHAYA, J.**

In both the appeals as common question is involved and verbatim similar orders both dated 19th December, 2018 have been passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai are under challenge, they were heard together and being disposed of by this common judgment.

2. Two 'Corporate Insolvency Resolution Process' were initiated, one against 'M/s. Green Gardens Private Limited' (Corporate Debtor No. 1) and another against 'M/s. Gemini Arts Private Limited' (Corporate Debtor No. 2) in which 'Mr. Nurani Subramanian Suryanarayanan', a common 'Resolution Professional' was appointed. In both the 'Corporate Insolvency Resolution Process', 'Kotak Mahindra Bank' (Financial Creditor) and 'Smt. K. Bharathi' (another 'Financial Creditor') proceeded simultaneously.

3. In one of the 'Corporate Insolvency Resolution Process' – 'CP/709/IB/2018' the respondent – 'Kotak Mahindra Bank' filed a

Miscellaneous Application 639/2018 stating that the 'Resolution Professional' wrongly included the family members of the erstwhile Managing Director as member of the 'Committee of Creditors' who has no voting rights being the mother-in-law of the Managing Director of the 'Corporate Debtor' i.e. Smt. K. Bharathi (Appellant in both the appeals).

4. Similar Miscellaneous Application 667/2018 was filed by 'Kotak Mahindra Bank' (Financial Creditor) in other 'Corporate Insolvency Resolution Process' CP/710(IB)/2017 raising similar objections with regard to Smt. K. Bharathi (Appellant in both the appeals).

5. The Adjudicating Authority by two separate verbatim similar orders both dated 19th December, 2018, referring to Section 5(24A) of the 'Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**') and the explanation below Section 5(24A) held that the Appellant being the mother of the Managing Director's wife, comes within the meaning of "related party".

6. Learned counsel for the Appellant submitted that the matter was heard by the Adjudicating Authority on the date when nobody appeared on behalf of the Appellant. Only the 'Resolution Professional' was present, who raised the objections.

7. According to the learned counsel for the Appellant, the mother-in-law of the erstwhile Managing Director cannot be held to be a 'related party' nor she can be held to be relative of the erstwhile Managing Director as per the provisions of the Companies Act, 2013.

8. It was submitted that the Appellant comes within the meaning of 'Financial Creditor' by reason of shares owned by her in the respective companies, which were provided as security for loan obtained from 'M/s. India

Bulls Financial Services Ltd.’ by the ‘Corporate Debtor(s), and were sold by ‘M/s. Indiabulls’ for recovery of the loan payable by the ‘Corporate Debtor’ resulting adjustment of such amount payable to the Appellant. It was further submitted that the appellant’s claim has been confirmed by the Arbitral Tribunal/Court, which is due and payable by the ‘Corporate Debtor(s)’. Therefore, the appellant being a ‘Financial Creditors’ in terms of Section 5(7), she was rightly included as members of the ‘Committee of Creditors’.

9. Learned counsel for the Appellant submitted that the relationship of the Appellant with that of the ‘Corporate Debtor’ is to be ascertained based on the provisions of Section 5(24) of the I&B Code. According to him, the definition of the word ‘relative’ is to be drawn from the Companies Act, 2013 in view of Section 3(37) of the ‘I&B Code’ which provides that where no definition has been provided in the ‘I&B Code’ meaning can be derived from the ‘Companies Act, 2013.

10. Learned counsel appearing on behalf of the Respondent ‘Kotak Mahindra Bank Ltd.’ has taken a similar plea as was taken before the Adjudicating Authority.

11. It was submitted that ‘Mrs. K. Bharathi’ is the mother of ‘Mrs. Padma Manohar’, wife of the ‘promoter’ of the ‘Corporate Debtor’ - ‘Mr. A. Manohar Prasad, and hence she is his mother-in-law. It was further submitted that the ‘Committee of Creditors was reconstituted in consequence of order dated 19th December, 2018 as impugned in these appeals and the ‘Committee of Creditors’ by its meeting held on 24th January, 2019 replaced the erstwhile ‘Resolution Professional’ and a new ‘Resolution Professional’ was appointed by order dated 13th February, 2019 passed by the Adjudicating Authority.

12. As the doubt was raised about the shares of 'Mrs. K. Bharathi' in the Company (Corporate Debtor) and, therefore, this Appellate Tribunal by order dated 12th March, 2019 asked the Appellant 'Mrs. K. Bharathi' to provide the status of the Appellant and state whether she is a 'shareholder' of the 'Corporate Debtor' or any of its subsidiary or holding any post in the 'Corporate Debtor' or its subsidiary or holding any advisory post. It was mentioned that if she is a shareholder, then she may state as to what is the total percentage of her share in the company.

13. Learned counsel appearing on behalf of the respondent 'Kotak Mahindra Bank' submitted that after the aforesaid order, more details were unearthed in the matter when 1st Respondent obtained a certified copy from the Adjudicating Authority (NCLT, Chennai) wherein the audited balance-sheet of the 'Corporate Debtor' (M/s. Green Gardens Pvt. Ltd.) was attached and forming part of the petition. The documents show that the daughter of the Appellant, one 'Mrs. Padma Manohar' was indicated as a 'shareholder', 'Director' and 'key Managerial Personnel' in the financial statements.

14. The Respondents filed an additional affidavit on 2nd May, 2019 and highlighting the significant aspects of the 'Audited Financial Statements' as on 31st March, 2017 of the 'Corporate Debtor' to suggest that the Appellant is a 'related party' of the 'Corporate Debtor(s)' as her daughter is connected with the 'Corporate Debtor' in '*Company Appeal (AT) (Insolvency) No. 17 of 2018*' in respect of 'M/s. Green Gardens Pvt. Ltd.' It shows that 'Mrs. Padma Manohar' is a 'shareholder' holding 28.5% of the shares of the 'Corporate Debtor' and 'Mrs. Padma Manohar' was a 'key managerial personnel' of the 'Corporate Debtor' (Company).

15. Both the 'Corporate Debtors' also filed two different 'financial statements' as on 31st March, 2017 before two different authorities namely NCLT, Chennai and 'Registrar of Companies', which was presented as a factual matrix. According to the learned counsel for the 1st Respondent the fact shown therein represents a fraudulent alteration of financial statement disclosures and an attempt to create two different financial statements to mislead the statutory authorities as under:

	Audited Financial Statements for period ended March 31, 2017 before NCLT as filed on May 30, 2018	Audited Financial Statements for period ended March 31, 2017 before RoC as filed on November 17, 2018
Shareholder of 28.5%	Mrs. Padma Manohar	Revised to one, Ms. Anjali Krishnamani
Director	Mrs. Padma Manohar	Revised to one, Mr. A. Balakrishnan
Key Managerial Personnel	Mrs. Padma Manohar	Revised to one, Mr. A. Balakrishnan

16. The Company has also filed two different financial statements as on 31st March, 2017 before two different authorities namely NCLT Chennai and Registrar of Companies which was occasioned only because of the objections raised by the 1st Respondent to the inclusion of the Appellant in the 'Committee of Creditors' of the entity. It was further submitted that the alteration was done after such objections were raised by 1st Respondent.

17. The loan to the Appellant 'Mrs. K. Bharathi' purported to have been disbursed in June, 2009 which forms the very basis of the 'corporate Insolvency Resolution Process' under Section 7 of the 'I&B Code' was never reflected in the 'Audited Financial Statements' of the entity from the period

2009-10 and was disclosed for the first time in the 'financial year' 2016-17'. Further based on the correspondence with the present 'Resolution Professional, it is stated that it should have been brought to the notice of the 1st Respondent that the original loan agreement of 'Mrs. K. Bharathi' has also never been produced before the previous 'Resolution Professional' or the present 'Resolution Professional'.

18. Having heard the learned counsel for the parties and taking into consideration the aforesaid facts, while we are not deliberating the issue whether the Appellant is a 'Financial Creditor' of the 'Corporate Debtor' or not, we are of the view that the 'Kotak Mahindra Bank Ltd.' having more than 65% voting share, it makes no difference whether Appellant should be made a member of the 'Committee of Creditors'. Further in view of the disputed question of facts as brought to our notice and referred to above, we are not inclined to grant relief. Both the appeals are accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)

[Kanthi Narahari]
Member (Technical)

New Delhi
2nd September, 2019

/ns/