

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS) No. 142 of 2021
(Under Section 61 of Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 20.04.2021 in IA(IBC) No.143 of
2021 and IA No.19 of 2021 in CP(IB)No.269/9/HDB/2018 passed by the
National Company Law Tribunal, Hyderabad, Special Bench – Court 1)

In the matter of:

1.M/s Orbit Electro Equipments Pvt. Ltd.

Unit No. 11, Wing J, 4th Floor, Tex Centre,
Premises Co-op Society Ltd.,
Chandivali Road,
Andheri (E), Maharashtra-400072.

Appellant No.1

2.Mr. Siddharth Shah

2803, Wing A, DB Woods, Gokuldham,
Opp Laxchandi Heights,
Goregaon East,
Mumbai, Maharashtra-400063.

Appellant No.2

V

1.Mr. Kapil Dev Taneja

(Ex Resolution Professional)
R/o 56-C/BB, Janak Puri, New Delhi-110058.

Respondent No.1

2.Monitoring Committee of Apex Drugs Ltd.

Through Mr. Kapil Dev Taneja
(Ex Resolution Professional)
R/o 56-C/BB, Janak Puri, New Delhi-110058.

...Respondent No.2

Present:

For Appellant	:	Mr. Utsav Mukherjee, Advocate
For Respondent No.1	:	Mr. Amir Bavani, Advocate
		For Kapil Taneja (Resolution Professional)

JUDGMENT (VIRTUAL MODE)

Preface:

The Appellants have preferred the present 'Appeal' being aggrieved with the order dated 20.04.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Special Bench Court-1 in IA(IBC) No.143 of 2021 and IA No.19 of 2021 in CP(IB)No.269/9/HDB/2018).

The 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Special Bench Court-1) while passing the 'Impugned Order' on 20.04.2021 in IA(IBC) NO.143 of 2021 and IA No.19 of 2021 in CP(IB)No. 269/9/HDB/2018 had observed the following:

"Counsel for RP is connected through video conference.

Counsel for resolution Applicant is also connected through video conference.

IA No.19/2021

This application is filed by the Resolution Professional complaining that the resolution plan which was approved has not been implemented till date and they paid only the first instalment and later they have not paid and lot of time gap has arisen and the respondent i.e. successful resolution applicant have not taken any steps in order to implement the plan or to proceed with the payments.

IA No.143/2021 is an application filed by the successful resolution applicant saying that there are several issues to be complied with by the RP and the same has not been complied with on account of various factors.

From the records and from the arguments heard of the Counsel for RP and also Counsel appeared for successful resolution applicant, it is prima facie clear that successful resolution applicant has paid first instalment and dragged on the matter till date without implementing the plan or without making payment.

In view of the same the approval of the resolution plan which has already been approved by the bench on 18.12.2019 and which was modified on 15.07.2020 requires reconsideration by the CoC. In view of the same entire Resolution Plan is remitted back to the CoC for fresh consideration, and amounts

paid by the successful resolution applicant is to be forfeited, and CoC may consider the matter a fresh. Hence, the order.”

and further directed to list the other IA No.531 of 2019 for further consideration on 04.05.2021.

Appellants’ Submissions:

According to the Learned Counsel for the Appellants on 31.05.2019, the ‘Appellants’ submitted the resolution plan to the Resolution Professional, which was approved by the ‘Committee of Creditors’ in the tenth meeting and thereafter, post receiving 100% approval of the Resolution Plan by the ‘Committee of Creditors’, the ‘Resolution Professional’ moved IA No.439 of 2019 seeking approval of the Resolution Plan’ from the ‘Adjudicating Authority’.

It is represented on behalf of the ‘Appellants that no claims were received from the workmen within the specified period or before approval of the ‘Resolution Plan’ and the same was made mention of in the ‘Resolution Plan’. In fact, the ‘Appellants’, in the interests of fair and equitable resolution of the ‘Corporate Debtor’ along with its workmen and in the light of the dicta laid down by the Hon’ble Supreme Court in the decision ‘Committee of Creditors of Essar Steel v Satish Gupta’ being aware of the issue of non-payment of salaries of the ex-employees added a provision in the ‘Resolution Plan’ by way of which a sum of Rs.25,00,000/- would be kept aside/apportioned for a period of nine months for any claims relating to the ex-employees for the period before the ‘Corporate Insolvency Resolution Process.

Added further, the stand of the ‘Appellants’ is that they set aside another Rs.25 lakhs for payments towards the ‘Operational Creditor’ dues. In fact, the intent behind apportioning the sum of Rs.50 lakhs was the effective implementation of the plan with no hindrance whatsoever. Pursuant to the filing

of IA/439/2019 by the ‘Resolution Professional’ seeking approval of the ‘Resolution Plan’, the ‘Adjudicating Authority’ granted approval to the ‘Resolution Plan’ on 18.12.2019.

The Learned Counsel for the ‘Appellants’ submit that subsequent to the approval of the plan, in terms of Section 31 of the Insolvency and Bankruptcy Code, the ‘Committee of Creditors’ and the ‘Resolution Professional’ became ‘Functus Officio’ and a stakeholders/Monitoring Committee being the 2nd Respondent was formed consisting ‘Financial Creditors’, the Appellants and the former ‘Resolution Professional’.

The Learned Counsel for the ‘Appellants’ point out that the ‘Appellants’ as on 28.08.2020 had paid the amount of Rs.6,35,90,000/-(from 15.04.2019 to 28.08.2020) towards the implementation of the ‘Resolution Plan’. Besides this, on 01.09.2020 and 02.09.2020, the ‘Appellants’ had paid a further sum of Rs.15,67,625/- as interest on delay of payment as per the revised schedule and a sum of Rs.37,268/- as compound interest.

The prime contention advanced on behalf of the ‘Appellants’ is that despite payment of the ‘First Tranche’ as mentioned in the ‘Resolution Plan’ within the prescribed timeline, they had not received any control of the ‘Corporate Debtor’ for a long time. In fact, the ‘Appellants’ filed IA/143/2021 seeking appropriate orders before the ‘Adjudicating Authority on the Respondents for handing over of the operational control of the ‘Corporate Debtor’ which had not taken place.

The Learned Counsel for the ‘Appellants’ proceeds to put forward a submission before this ‘Tribunal’ that all the amounts were paid by the ‘Appellants’ and the same is not ‘disputed by the other side. In this connection, the plea of the ‘Appellants’ is that the ‘Adjudicating Authority’ in the ‘Impugned Order’ cannot suo motto direct reconsideration of an already approved ‘Resolution Plan’ and further that the said order/direction(s) was/were issued by

the ‘Adjudicating Authority’ is an illegal one, especially when the order was passed by the ‘Adjudicating Authority’ in directing the ‘Committee of Creditors’ to forfeit the sizeable amounts already paid by the ‘Appellants’ to the tune of around Rs.6,35,00,000/-. In reality, the ‘Adjudicating Authority’ had lost sight of the fact that ‘Committee of Creditors’ is no longer in existence after the approval of ‘Resolution Plan’ and erroneously had issued a direction to the ‘Committee of Creditors’ to reconsider the ‘Resolution Plan’.

The Learned Counsel for the ‘Appellants’ submits that the ‘Impugned Order’ dated 20.04.2021 in IA(IBC) No.143 of 2021 and IA No.19 of 2021 in CP(IB)No.269/9/HDB/2018 passed by the ‘Adjudicating Authority’ is not a ‘speaking order’ and also in negation of the principles of natural justice. Moreover, in law, after the ‘Resolution Plan’ being approved, the same cannot be sent back to ‘Committee of Creditors’ for reconsideration, and an inherent power cannot be invoked for the same.

Assessment:

At the outset, this ‘Tribunal’ pertinently points out that the ‘Appellants’ before this ‘Tribunal’ reiterates that they remain committed to the ‘Resolution Plan’ and as a matter of fact, as on date, according to the Learned Counsel for the ‘Appellants’, all amounts were paid, which fact is not disputed on the side of 1st Respondent/‘Resolution Professional’.

At this juncture, it is useful to recall and recollect the judgment of the Hon’ble Supreme Court in Kalparaj Dharamshi and Anr. v. Kotak Investments Advisors Ltd. and Anr. (vide Civil Appeal Nos. 2943-2944 of 2020 dated 10.03.2021) wherein it is observed that the object and spirit of the code is paramount and further that the technical issues pertaining to time lines ought not to come in the way of successful resolution of a ‘Corporate Debtor’ and maximisation of value.

As far as the present case is concerned, this ‘Tribunal’ taking note of the fact that all the amounts were paid by the ‘Appellants’ (as informed by the Learned Counsel for the ‘Appellants’) and also on going through the ‘Impugned Order’ dated 20.04.2021 in IA(IBC) No.143 of 2021 and IA No.19 of 2021 in CP(IB)No.269/9/HDB/2018 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Hyderabad Special Bench Court-1) inter alia to the effect that.... “it is prima facie clear that successful resolution applicant had paid first instalment and dragged on the matter till date without implementing the plan or without making payment.

In view of the same, the approval of the plan, which has already been approved by the bench on 18.12.2019 and which was modified on 15.07.2020, requires reconsideration by the CoC. In view of the same entire Resolution Plan is remitted back to the CoC for fresh consideration and amounts paid by the successful resolution applicant is to be forfeited and CoC may consider the matter a fresh. Hence the order.” is of the earnest opinion that the said order is not in accordance with law, considering the fact that the ‘Adjudicating Authority’ had exceeded its jurisdiction besides cannot suo motto direct the reconsideration of an already approved ‘Resolution Plan’ because of the fact that after the approval of the ‘Resolution Plan’ the ‘Committee of Creditors’ become ‘functus officio’.

Further, it may be clarified that the Insolvency and Bankruptcy Code 2016 provides for liquidation of the corporate debtor in case of failure of the approved resolution plan. Under no circumstance on the failure of the approved resolution plan, COC is empowered for fresh consideration. While dealing with insolvency matters, the role of Adjudicating Authority is confined to the four corners of the Code.

Section 33 (3) and (4) specifically deals with the course of action available in case of failure of the approved Resolution Plan. Section 33 of the Code is given below for ready reference;

“Sec 33 of Insolvency and Bankruptcy Code

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(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

Apart from this, this ‘Tribunal’ is of the considered view that the ‘Adjudicating Authority’ had passed an illegal ‘Impugned Order’ while it directed these ‘Committee of Creditors’ to forfeit the amounts already paid to a sizeable extent. Moreover the ‘Impugned Order’ dated 20.04.2021, which is challenged before this ‘Tribunal’, is not a reasoned/speaking order. Viewed from any angle, the ‘Impugned Order’ dated 20.04.2021 in IA(IBC) No.143 of 2021 and IA No.19 of 2021 in CP(IB)No.269/9/HDB/2018 bristles with legal infirmities and the same is set aside by this ‘Tribunal’, in furtherance of the substantial cause of justice. Resultantly, the Appeal succeeds.

Conclusion:

In fine, the instant Company Appeal (AT)(CH)(INS) No.142 of 2021 is allowed without costs, the 'Impugned Order' dated 20.04.2021 in IA(IBC) No.143 of 2021 and IA No.19 of 2021 in CP(IB)No.269/9/HDB/2018 is set aside by this 'Tribunal' for the reasons assigned in this 'Appeal'. However, the matter is remitted back to the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench) for passing necessary reasoned orders 'de novo' keeping in mind the object and spirit of the Insolvency and Bankruptcy Code and 'in accordance with law', of course, after providing adequate opportunities to the respective parties to complete the pleadings in the application(s) and to hear their contentions through Learned Counsels, keeping in mind the principles of natural justice.

[Justice Venugopal M]
Member (Judicial)

[V. P. Singh]
Member (Technical)

02.07.2021
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