

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**CHENNAI BENCH, CHENNAI****COMPANY APPEAL (AT)(CH)(INS) NO.265/2021****AND****IA NO. 581/2021****In the matter of:**

Bangalore Land & Homes Ltd

Appellant

Vs

Shriram Land development P Ltd & anr

Respondent

Present:

For Appellant : Mr. P.H. Arvindh Pandian, Sr. Advocate
 For Mr. Rohan K George, Advocate
 Mr. R. Pushkar
 Ms. Vaasavi Sashiraman,
 Mr. Sriya Sridhar, Advocates

For Respondent No.1/
 Liquidator

: Mr. S.K. Ravi, Advocate

For Respondent No.2

: Mr. K. Moorthy, Advocate

ORDER
VIRTUAL MODE

01.12.2021: Heard the Learned Counsels appearing for the respective parties.

According to the Learned Senior Counsel for the Appellant that the instant 'Appeal' is preferred against the impugned order dated 01.10.2021 of the 'Adjudicating Authority' (National Company Law Tribunal, Chennai) pass in IA No.1331/IB/2020 in CP/IBA/863/2019 (Filed by the Resolution Professional under Section 12 of the I&B Code, 2016) whereby and whereunder an 'order' of liquidation in respect of the 1st

Respondent/Corporate Debtor/M/s Shriram Land Development P Ltd was passed.

According to the 'appellant, on 06.03.2020 in the 4th COC Meeting, the Committee of Creditors felt it was necessary to appoint an external expert for valuing the Enterprise as a whole and the purpose of marketing. As such, the CoC had passed a unanimous Resolution to extend the 'CIRP' period by another 90 days. Further, on 16.03.2020, IA No.1331/IB/2020 in CP/IBA/863/2019 under Section 12 of the I&B Code was projected by the Resolution Professional to extend the 'CIRP' by 90 days for engaging a marketing professional to value the Enterprise and evaluate 1st Respondent.

It is represented on behalf of the 'Appellant' that 'Milestone' had filed a recovery suit, Commercial Suit (L) No.294/2020, together with Interim Application No.2184/2020 against the 'Issuer Company' before the Hon'ble Bombay High Court and on 14.01.2021 a settlement was arrived at between 'Milestone' and 'Issuer Company'.

Moreover, on 12.02.2021, Vistra ITCL (India) Ltd on behalf of its Facility Agent, Nisus Finance & Investment Managers LLP, one of the CoC Member had furnished a letter stating that they will vacate from the Committee of Creditors of the 1st Respondent.

The contention of the Appellant is that the 'Adjudicating Authority' had committed an error in noting that the period of 330 days of 'CIRP' had ended and passed the impugned order, which is not valid in the eye of Law. Continuing further, it is the plea of the Learned Counsel for the Appellant that the Hon'ble Supreme Court of India in re Cognizance for extension of

limitation, Miscellaneous Application No.665/2021 in SMW(c) No.3/2020, dated September 23, 2021 had passed an order to exclude the period of initiation of CIRP from 15.03.2020 to 02.10.2021 and in the instant case the liquidation order was passed by the Adjudicating Authority, by virtue of the impugned order dated 01.10.2021, based on the footing that the 330 days had expired in the matter.

The Learned Counsel for the Appellant takes a premordial plea that in the teeth of the ingredients of Regulation 40(c) of the CIRP Regulations coupled with the Judgement of the Hon'ble Supreme Court of India on 02.10.2021, only 177 days out of 330 days of CIRP was completed and as such, the observations made in the preamble portion of the impugned order dated 01.10.2021 that the 330 days CIRP period had ended is an incorrect one.

Advancing his argument, the Learned Counsel for the Appellant submits that in the teeth of Regulation 40(c) of the CIRP Regulations and the Judgement of the Hon'ble Supreme Court of India dated 02.10.2021 only 177 days out of 330 days of CIRP Period was completed. At this juncture, this Tribunal had perused the impugned order dated 01.10.2021 passed by the Adjudicating Authority in IA No.1331/IB/2020 in CP/IBA/863/2019 and is of the considered opinion that the 'Adjudicating Authority' had passed the 'impugned order' based on the reason that the period of 330 days had already expired without any 'Resolution Plan' in place and ordered the liquidation of the Applicant Company/1st Respondent, as per Section 33(1)(a) of the I&B

Code, 2016 and appointed Mr. Anantachari Mahesh as Liquidator of 1st Respondent.

Be that as it may, this 'Tribunal' taking note of the fact that 'CIRP' of the 1st Respondent was ordered on 20.09.2019 and on 06.03.2020 (168 days), the CoC in its 4th Meeting had passed a Resolution to extend the CIRP by 90 days on 15.03.2020 (177 days) the lock down imposed by the Central and State Governments had commenced and on 16.03.2020 (178 days) it is quite evident that the Resolution Professional/2nd Respondent had filed an application under Section 12 of the I&B Code, 2016 to extend CIRP by 90 days and the completion of 180 days was on 18.03.2020. As a matter of fact, the Hon'ble Supreme Court of India had passed an order to exclude the period of limitation from 15.03.2020 till 02.10.2021 and keeping in mind the Regulation 40 of the CIRP Regulations and coupled with the order of the Hon'ble Supreme Court of India on 02.10.2021 it is latently and patently clear that only 177 days out of 330 days of CIRP was over. Therefore, the contra observations made by the 'adjudicating Authority' in the impugned order that 330 days CIRP period had ended/expired are untenable, one which cannot be sustained in the eye of Law, of course, based on the facts and circumstances of the instant case in an integral manner. As such, this 'Tribunal' interferes with the impugned order dated 1.10.2021 passed in IA No.1331/IB/2020 in CP/IBA/863/2019 and set aside the same, in furtherance of substantial cause of justice. Consequently, the 'Appeal' succeeds.

In fine, the instant Company Appeal (AT)(CH)(ins) No.265/2021 is allowed. No costs. The appointment of Liquidator made by the 'Adjudicating

Authority' is set aside and all actions taken pursuant to the impugned order by the Liquidator are declared invalid. The impugned order is set aside. The matter is remitted back to the 'Adjudicating Authority' (National Company Law Tribunal, Chennai) who is directed to restore the IA No.1331/IB/2020 in CP/IBA/863/2019 on its file and to dispose of the matter on merits, of course, after providing due opportunities to respective sides to raise all factual and legal pleas as early as possible.

Liberty is granted by this Tribunal to the 2nd Respondent/Resolution Professional to file the necessary IA by providing qualitative and quantitative details in the form of averment in the said application before the Adjudicating Authority so that these aspects may be taken note of by the 'Adjudicating Authority' (National Company Law Tribunal, Chennai) and to pass orders on the said application on merits. Before parting with the case, it is made lucidly clear that the time between the date of filing of the 'Appeal' till the same being disposed of shall be excluded at the time of passing fresh orders by the 'Adjudicating Authority' in IA No.1331/IB/2020 in CP/IBA/863/2019, in the subject matter in issue

(Justice M. Venugopal)
Member (Judicial)

(Mr. Kanthi Narahari)
Member (Technical)

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