

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI BENCH
CHENNAI
COMPANY APPEAL (AT)(CH)(INSOLVENCY) NO. 38/2022
&
I.A. No. 75/2022

In the matter of:

Anil Kumar Ojha ..Appellant

Vs

**Chandramouli Ramasubramaniam Resolution
Professional of SLO Industrial Ltd. & Anr.** ..Respondents

Present:

For Appellant : Ms. C. Jayachithra, Advocate

ORDER
(VIRTUAL MODE)

28.02.2022 Heard Ms. C. Jayachithra, Learned Counsel appearing for the Appellant and the instant 'Company Appeal (AT)(CH)(Ins) No. 38/2022' is disposed of at the 'Admission Stage' itself.

2. The 'Adjudicating Authority' (National Company Law Tribunal, Special Bench – 1, Chennai) while passing the impugned order dated 23.12.2021 in IA(IBC)/1095/CHE/2021 in CP 1264/IB/2018 (filed by the Appellant/Applicant) under Section 60(5) of I & B Code, 2016, at paragraphs 3 & 4 had observed the following:

3. *"A cursory reading of the aforesaid provision would posit the fact that only the 'Committee of Creditors' is empowered to change the 'Resolution Professional' during the CIRP period with a majority of 66% vote. No such right has been conferred under the provisions of IBC, 2016 upon the suspended Board of Director to replace the 'Resolution Professional' as sought in the present Application. Section 60(5) of IBC, 2016 cannot be stretched to such an extent so as to make Section 27 of IBC, 2016 as otiose. In spite of explaining the said legal position during the*

hearing held on 21.12.2021 and giving opportunity to withdraw the present Application the Learned Counsel for the Applicant persisted with the present Application.

4. Upon going through the averments in the Application, it is seen that on the face of it that the present Application is not maintainable under Section 60(5) of IBC, 2016 as the suspended Board of Directors have no locus standi to maintain the relief as prayed for. Under such circumstances, in order to dissuade other Applicants from filing such frivolous Application, we hereby dismiss the present Application with an exemplary cost of Rs. 1,00,000/- (Rupees One Lakh only) to be paid to the 'Prime Minister's' National Relief Fund (PMNRF) within a period of 7 days from the date of this order."

and directed the matter to be listed on 17.01.2022 for reporting compliance on the part of the Appellant/Applicant.

3. Assailing the impugned order dated 23.12.2021 in IA(IBC)/1095/CHE/2021 in CP 1264/IB/2018 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Special Bench – 1, Chennai), the Learned Counsel for the Appellant/Applicant submits that the Respondent No. 1 had violated Sections 185, 208(2)(a) & (e) of the IBC, Regulation 7(2)(a),(bb) & (h) of the IBBI (Insolvency Professional) Regulations, 2016 ('IP Regulations') read with clauses 1,2,3,5,10,12,14,16,17 and 23(B) of the Code of Conduct mentioned in First Schedule of the IP Regulations, Regulation 27 & 36(2)(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

4. The grievance of the Learned Counsel for the Appellant/Applicant is that in view of the peculiar circumstances, the Appellant/Applicant had

projected the Application under Section 60(5) of I & B Code, 2016 relating to Rule 11 NCLT Rules, 2016 before the 'Adjudicating Authority' seeking the excise of powers by the 'Adjudicating Authority', to meet the ends of justice.

5. The other contention advanced on behalf of the Appellant/Applicant is that the 'Adjudicating Authority' had passed the impugned order 23.12.2021 in dismissing the Interlocutory Application (IBC)/1095(CHE/2021 in CP/1264/IB/2018 on the ground of 'Maintainability' and in fact, the Appellant/Applicant has every 'Locus', to prefer said Interlocutory Application before the 'Adjudicating Authority'. However, the 'Adjudicating Authority' based on erroneous view had dismissed the instant 'Appeal', which had resulted in serious miscarriage of justice.

6. To be noted that Section 60(5) of I & B Code, 2016 deals with the question of priorities or concerning 'question of Facts and Law', to be determined by an 'Adjudicating Authority'.

RESOLUTION PROFESSIONAL'S APPOINTMENT

7. Section 22 of the I & B Code, 2016 mentions the involvement of the 'Financial Creditor' in the appointment of 'Resolution Professional'. The 'Committee of Creditors' first Meeting is to be conducted within 'seven days' of its 'construction' with a view to appoint a Resolution Professional. The 'Committee of Creditors' can continue with the 'Interim Resolution Professional' or displace him, by a majority of 66%. An Application to replace an 'Interim Resolution Professional' is to be addressed to the 'Adjudicating Authority' who is to forward the same to IBBI for 'confirmation'. Upon the said 'Confirmation' the 'Adjudicating Authority' will appoint the 'Resolution

Professional'. If the IBBI is not affirming the name of the proposed 'Resolution Professional' within ten days, the 'Adjudicating Authority' is empowered in directing the 'Interim Resolution Professional', to continue to function as the 'Resolution Professional', until such time as the IBBI confirms the appointment of the 'Resolution Professional'. As per decision of the Hon'ble Supreme Court, in the matter of "Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta" reported in 2018 SCC Online 1733.

DISPLACEMENT OF RESOLUTION PROFESSIONAL

8. Section 27 of I & B Code specifies that a 'Resolution Professional' may be replaced/displaced at any time during 'CIRP' by the 'Committee of Creditors', by a 66% majority of voting shares, subject to a written consent of the proposed 'Resolution Professional'. The 'desires' of majority of 'Creditors' is to be given weight. Undoubtedly, the 'Committee of Creditors' do have the right to displace a 'Resolution Professional'. Section 27 of the Code, similar to that of Section 22 of the Code, provides for 'Creditors' involvement in the replacement of the 'Resolution Professional'.

9. An 'Adjudicating Authority' is perforced to consider the name of 'Resolution Professional' proposed by the 'Committee of Creditors', in the event of the 'Committee of Creditors' is replacing the 'Resolution Professional'. It is to be remembered that if no name is proposed by the 'Committee of Creditors' an 'Adjudicating Authority' is to call for a person's name from 'Insolvency and Bankruptcy Board of India'.

10. At this juncture, this connection, this 'Tribunal' on going through the 'impugned order' dated 23.12.2021 in IA(IBC)/1095/CHE/2021 in CP

1264/IB/2018 on the file of the ‘Adjudicating Authority’ (National Company Law Tribunal, Special Bench -1, Chennai) is of the considered opinion that the ‘Committee of Creditors’ is entitled and also empowered to change the ‘Resolution Professional’ in ‘Corporate Insolvency Resolution Process’ and that too, with a Majority of 66 % votes. In reality, the ‘Suspended Board of Director’ under the I & B Code, 2016 is not enjoined with the ‘power’ to displace the existing ‘Resolution Professional’ and to seek for a replacement of another ‘Resolution Professional’, being appointed in his place. Added further, an ‘Adjudicating Authority’ is to adhere to the procedural formalities which are mentioned in the relevant Sections of the Code, depending on the controversies involved, in the subject matter.

11. Suffice it for this ‘Tribunal’ to make a pertinent mention that the IA(IBC)/1095/CHE/2021 in CP 1264/IB/2018 (filed by the Appellant/Applicant) before the ‘Adjudicating Authority’ is devoid of merits. Consequently, the instant ‘Appeal’ fails.

RESULT

In fine, the instant Company Appeal (AT)(CH)(Insolvency) No. 38 of 2022 is dismissed as ‘Not Maintainable’, for the reasons ascribed by this ‘Tribunal’ in the instant ‘Appeal’. No costs. I.A. No. 75/2022 is closed.

**(Justice M. Venugopal)
Member(Judicial)**

**(Kanthy Narahari)
Member (Technical)**

AKC/MD