NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.32/2021
(IA No.74/2021)

In the matter of:

P. Navcen Chakravarlhy,
New No. 32. Old No 6. Jamalia Nagar,
Perambur High Road, Chennai – 600 012 … Appellant
V
Ramakrishnan Sadasivam.
Liquidator of MK Cables & Conductors
Private Limited,
Old No.22, New No.28, Menod Street,
Purasawalkam, Chennai - 600 007. ...1st Respondent

Punjab National Bank,
ARMB Branch, PNB Towers,
Mezzanine Floor, 46-49,
Royapettah High Court, Chennai – 600 014. …2nd Respondent

Present :

For Appellant : Mr. B. Deepak Narayanan, Advocate
For Respondent : Mr. T. Ravichandran, Advocate for R1
Mr. M.L. Ganesh, Advocate for R2

JUDGEMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

Few facts which necessarily require consideration are that the Appellant in the Company Appeal in question, has put a challenge to the impugned order dated 27.01.2021, as it has been rendered in IA/587/IB/2020 in IBA/257/2019 filed under Section 33(2) of I & B Code, which has resulted into the passing of an order of liquidation of the Corporate Debtor, (M/s. MK Cables and Conductors Pvt. Ltd.) and appointed Respondent No.1 as liquidator to the Corporate Debtor.

The backdrop on which the said order has been put to challenge, are that, it is contended by the Appellant that, the Corporate Debtor had borrowed a sum of Rs.10.76 crores from Respondent No.2 on 30.03.2011 and on 14.03.2014, had mortgaged the factory premises at SIPCOT Industrial Complex, Gummudipoondi Taluk measuring 60,000 sq.ft. along with another property situated at Ponneri against to the said loan and that the book value of the properties thus mortgaged were assessed to be worth 25 crores and Rs.14 crores respectively, the total value being Rs.39 crores.

The Appellant submits that, while the CD was initially prompt in repaying the loan dues, due to various financial constraints faced by him in 2015, he defaulted in repayment of loan dues and that, as consequent to the admitted default committed by him, the Financial Creditor declared the account as NPA on 20.09.2015, issued notices under Section 13(2) of SARFAESI Act and thereafter, took symbolic possession of the property under Section 13(4) of the SARFAESI Act.

The Appellant submits that despite of the aforesaid proceedings under SARFAESI Act, the 2nd Respondent, the Financial Creditor sanctioned an OTS proposal of 21.06.2017, providing 6 months' time to the Corporate Debtor, to make good the payment of the amount due under the financial assistance of 30.03.2011 and 14.03.2014, but he did not adhere to the terms of the OTS proposal offered by it and retook the possession of the property in the 4th month itself, instead of waiting for completion of 6-month period to be over.

The Appellant contends that after failure of OTS process, Respondent No.2 proceeded with auction of the property by issue of the auction notice under the SARFAESI Act. The Appellant alleges that Respondent No.2 wrongly described the extent of the property in the auction sale notice which resulted in drastic reduction in the market value of the property and the property worth Rs.25 crore was sold by the 2nd Respondent in the 10th Auction Sale proceedings, at a throw-away price of Rs.5.22 crores to one M/s. Drill Jig Bushing Company (Madras) Private Limited.

The Appellant contends that, dissatisfied with the Auction Sale proceedings as it was held on the basis of the 10th auction sale notice dated 04.05.2018, he preferred an application before the Learned DRT II, Chennai, who passed an order in SA No.126/2018 dated 13.12.2018, setting aside the auction sale. Being aggrieved against the aforesaid Order of 13.12.2018 as it was passed by the DRT, the Respondent No.2 preferred an appeal against the said order before the Learned DRAT being RA (SA) 7/2019, which was allowed on 21.08.2019, quashing the DRT order dated 13.12.2018 and accordingly the sale thus made on basis of 10th Auction Notice was confirmed in favour of the third party.

Meanwhile, the Corporate Debtor was admitted into CIRP Proceedings by an order passed on IBA/257/2019 dated 30.07.2019, the Learned Adjudicating Authority on an application thus filed by M/s. Sri Balaha Chemicals Private Limited, the Interim Resolution Professional Mr. R. Sankaran was appointed to administer CIRP Proceedings, claims were invited and based on such, Respondent No.2 became the sole Financial Creditor, forming 100% of CoC.

During the intervening period, two Writ Petitions being W.P. No.25839/2019 which was filed by the Resolution Professional, and another Writ Petition, being W.P. No.27780/2019 which was filed by the Appellant before the Hon'ble High Court of Madras, against the order of DRAT. Initially, the Hon'ble High Court of Madras had granted an Interim Order on 19.09.2019 staying the order of DRAT dated 21.08.2019 in the Writ Petitions thus referred above. It is contended by the Appellant that upto 6th CoC meeting, CoC took a view to wait for final orders in the writ proceedings because the land and buildings of the Corporate Debtor was subjudice and refrained from issuing EoI. However, in 9th CoC meeting it decided in favour of liquidation with malafide intentions, on the grounds that the Corporate Debtor is not a going concern since 2015 without taking into account the fact that the operations of the Corporate Debtor had stopped since 2015 because 2nd Respondent has taken symbolic possession under SARFAESI Act. The Appellant contends that the duty of RP is to maximise the value of the Corporate Debtor during CIRP and for this, he should have taken all steps to bring land & buildings, which were auctioned off under SARFAESI Proceedings and which were stayed by Hon'ble High Court, under his control, so as to enhance the value of the assets of the Corporate Debtor and that the Resolution Professional has miserably failed in this respect and instead, filed an application for liquidation i.e, IA No.587/IB/2020 before the Learned NCLT, Chennai. The Appellant further contends that he had filed an application being M.A. (S.R.) No.1169 and 1170/2020, before the Learned Adjudicating Authority praying for a stay of the liquidation process initiated on the basis of the filing of IA No.587/IB/2020, with the prayer contained in it for the removal of the Resolution Professional on the grounds that if Hon'ble High Court sets aside the auction sale, there is a very good chance of success of CIRP Proceedings. The M.A. (S.R.) No.1169 and 1170/2020 as filed by the present Appellant were dismissed, by NCLT, Chennai, holding it to be not maintainable by an order of 08.01.2021. Meanwhile, the proceedings which arose from the DRAT proceedings and were the subject matter of Writ Petition No.27780/2019, was allowed by Hon'ble High Court, the Judgment of DRAT in RA (SA) No.7/2019, was set aside and the matter was remanded for its fresh consideration. However DRAT on reconsideration allowed the Appeal of 2nd Respondent confirming the auction sale, against which he preferred a WP in SR No.20772 of 2021 which was said to be pending at the time of filing the instant Appeal.

It is the contention of the Appellant that despite a reasonable chance of success of CIRP, Learned Adjudicating Authority chose to pass the Impugned Order on IA No.587/IB/2020 on 27.01.2021, whereby the Corporate Debtor was put to liquidation, which he seeks to challenge in the instant Company Appeal. The grounds of challenges are that Respondent No.1 and Respondent No.2 have colluded to push the Corporate Debtor into liquidation with the sole intent of selling the assets of Corporate Debtor, Respondent No.2 did not issue a single

EoI, application for liquidation was moved with the sole purpose of lifting the embargo of moratorium on sale of Corporate Debtor's land through SARFAESI Proceedings, and that if liquidation order is set aside, there is a chance of saving the land of Corporate Debtor from auction and consequently, of Successful Resolution of the Insolvency of the Corporate Debtor which is the objective of I & B Code.

The Respondent No.1, the liquidator in his counter has stated that the order of liquidation was passed well in accordance with the parameters prescribed under Section 33(2) of I & B Code, that the scope of interference of the Learned Adjudicating Authority in this case is very limited in as much as Section 33(2) states that as soon as the CoC decides to liquidate the Corporate Debtor, the Learned Adjudicating Authority shall pass an order of liquidation, that it is always the prerogative of the financial creditor and the CoC to exercise its commercial wisdom for initiation of liquidation proceedings, which under the normal conditions cannot be subjected to judicial scrutiny, normally until or unless it suffers from perversity apparent from the face of records, that functioning as a liquidator, he invited claims from various stakeholders, conducted auction of the assets of the Corporate Debtor, issued Letter of intent to one M/s. PSM Enterprises, being Successful Auction Purchaser and handed over the possession of the plant and machinery to the said Successful Auction Purchaser on 06.01.2021.

The Respondent No.1 in the objection thus filed has submitted that in view of the completion of the liquidation process, with the sale of the assets of the Corporate Debtor to the Successful Auction Purchaser, on 16.01.2021, he had filed an application being IA No.1307/2021, under Section 54 of the I & B Code seeking direction from the Learned Adjudicating Authority, closure of the liquidation process and the dissolution of the Corporate Debtor and the same is pending adjudication before Learned NCLT. He has further submitted that since the liquidation process has already been completed, the Successful Auction Purchaser, has been handed over the possession of the property of the Corporate Debtor and the application under Section 54 for closure of the liquidation process and the dissolution of the Corporate Debtor is pending consideration, nothing much survives to be resolved and that nothing survives in the instant Company Appeal as of now, which could at all be required to be considered to be addressed by this Appellate Tribunal on merits. To press his point, the Learned Counsel for the Respondent No.1 has drawn the attention of this Tribunal to the Judgment of 01.02.2021, as it was rendered by Hon'ble High Court of Judicature at Madras in Writ Petition No.27780/2019, Mr. P. Naveen Chakravarthy Vs Punjab National Bank and in particular, to para 10 of the Judgment of the Hon'ble High Court of Madras dated 01.02.2021 which is extracted as under: -

> *"10. For whatever it is worth, notwithstanding the practical effect of this order being close to nothing, once it is brought to the notice of a constitutional Court that a quasi-judicial authority had acted in error or excess of jurisdiction and in derogation of a statutory mandate, the*

constitutional authority has per force to correct the mistake. As a consequence, the order of the DRAT passed on August 21, 2019 and challenged in the present writ petition is set aside and the matter restored to the board of the relevant DRAT at the stage immediately prior to the date when the order was passed. As the moratorium is no longer in place since the company has gone into liquidation, the RP, who has metamorphosed as the liquidator of the company, will espouse the cause of the company in liquidation before the DRAT. If, as the liquidator reports, the relevant secured asset proceeded against by the bank has been kept outside the purview of the liquidation proceedings, the RP may have precious little to say before the DRAT, for the DRAT to, in effect, pass the same order now that the embargo no longer operates".

The Hon'ble High Court of Madras too has observed that since the liquidation has already been completed and since as per the liquidator report and the relevant records as it was proceeded by the bank has been kept outside the liquidation process proceedings, nothing much survives in the appeal to be addressed on merits.

The fact of completion of the process of liquidation is not a fact which has been disputed by the Learned Counsel for the Appellant in his notes of submission. Rather he has submitted that the Hon'ble High Court had set aside the order of DRAT in RA (SA) No.7/2019, by way of its order dated 01.02.2021; but the subsequent proceedings in DRAT and his challenge to the order of DRAT in CRP No.787/2021, before Hon'ble High Court went against him primarily because the liquidator (formerly RP) chose to press for liquidation of the Corporate Debtor and withdrew his Writ Petition from Hon'ble High Court, which actually had helped in staying the auction proceedings. Be it what it may, in the instant case, the process of liquidation is complete, the sale of assets have been confirmed and the assets have been handed over.

Apart from it, if the impugned order dated 27.01.2021, as rendered by the Learned Adjudicating Authority is taken into consideration, it has been a logical outcome of the resolution which was passed in the 9th CoC meeting which recommended liquidation of the Corporate Debtor and based on such resolution of CoC and the written of consent of the Resolution Professional dated 18.06.2020 to function as liquidator, Learned Adjudicating Authority had ordered the Corporate Debtor to be put to liquidation, which is not established or argued to be in contravention to any of the provisions of law, as contemplated under the I & B Code. Since now much water has been flown after passing of the order of the appointment of the liquidator, the appeal deserves to be dismissed, as now third-party interest has been created subject to the confirmation of the sale made by the liquidator. The consequential effect would be that the so-called claim of the right of indemnification comes to an end, as over the assets as detailed above, with the Auction Purchaser already been placed in possession. Hence the Company Appeal would stand dismissed owing to the aforesaid reasons.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

01.04.2025
VG/MS