NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 554/2025
(IA No. 1612/2025)

In the matter of:

Kences Constructions Private Limited
8th Floor, Kences Towers,
No.1, Ramakrishna Street,
North Usman Road,
T.Nagar, Chennai – 600 017.

Dr. Madala Srinivasu
4/211, Villa No.7,
Dr. MGR Road, Palavakkam,
Chennai – 600 041.

Ms. Anita Madala
4/211, Villa No.7,
Dr. MGR Road, Palavakkam,
Chennai – 600 041. ….Appellants

V

Mr. Ashish Vyas,
Resolution Professional of
Maan Sarovar Properties Development Pvt. Ltd.
IP Regn No. IBBI/IPA-001/IP-P-01520/2018-2019/12267
B-1A Viceroy Court CHS, Thakur Village, Kandivali (East),
Mumbai Suburban, Maharashtra - 400 101. ….Respondent

Present :

For Appellants : Mr. T. Ravichandran, Advocate
For Respondent : Mr. F. Raymond Albyness, Advocate

JUDGMENT
(Hybrid Mode)

19.11.2025:

Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial)

With the consent of the Learned Counsels for the parties, we proceed to hear the instant Company Appeal itself on the merits.

The instant Company Appeal is accompanied with an Interlocutory Application, being an application for seeking condonation of delay in refiling of the Company Appeal i.e., IA No.1612/2025. The number of days of delay that has been sought to be condoned is 8 days in refiling the Appeal. Having heard the Learned Counsels for the parties on the application and also having considered the grounds taken in the application, the delay of 8 days that has chanced in refiling of the Company Appeal would stand condoned. Accordingly, **IA No.1612/2025** would stand disposed of.

2. The backdrop under which the controversy arises, is limited to the extent of the claim for remittance of interest on the refund amount of the Performance Bank Guarantee (PBG).

3. The brief facts are that the Applicants are the Successful Resolution Applicant, having been so determined after the conclusion of Section 7 of the I & B Code proceedings, where the Resolution Process was drawn against M/s. Maan Sarovar Properties Development Private Limited (the Corporate Debtor). Consequent to the admission of the Corporate Debtor into the CIRP process, the plan was submitted by the consortium of Applicants, to the Resolution Professional (Respondent herein), who upon being satisfied with the same, holding it to be in conformity with the Regulations, submitted the proposal of the Appellants for Rs.26.50 Crores to the Committee of Creditors, which after extensive discussions approved it.

Consequently, a plan approval application was preferred by the RP before the Learned Adjudicating Authority, being IA(IBC)(Plan)/5/CHE/2024, consequent to the approval of the plan by 95% of the voting by members of CoC. A Letter of Intent was issued on 13.03.2024, to the Successful Resolution Applicant; Clause 1.10 of Request for Resolution Plan (RFRP), prescribed for the Resolution Applicant to deposit the Performance Bank Guarantee (PBG), which was to be equivalent to 15% of the proposed plan amount, with the lead Financial Creditor. The Appellant complied with the said direction and had deposited 15% of the plan amount (i.e., Rs. 3,97,50,000) on 16.03.2024. However, later on, a decision was taken in the 30th CoC meeting, whereby it was resolved with a majority vote of 98.37%, to withdraw the plan and to proceed with to liquidation of the Corporate Debtor. This decision of the 30th CoC meeting was challenged by the Appellant by filing IA No.855/2025 praying for to declare the minutes of the 30th CoC meeting to be illegal and void. The relief sought for by the Applicant in the said IA, as preferred on 23.05.2025, was as under: -

> *"**6. Relief(s) Sought:-***
>
> *It is therefore, prayed that this Hon'ble Tribunal may be pleased to declare that:*
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> *a) the minutes of 30th meeting of CoC of Maan Sarovar Properties Development Pvt. Ltd. deciding to liquidate the corporate debtor coupled with e-voting result is non est, illegal and void'*

b) and pass such other orders which are deemed fit and necessary in the nature and circumstances of the case and thus render justice."

4. During the pendency of this IA No.855/2025, the Appellant, who was identified as the Successful Resolution Applicant, preferred a memo on 19.08.2025 before the Learned NCLT, while referring to the pleadings of IA No.855/2025, which was giving a challenge to the 30th CoC meeting, that it does not intends to press upon the IA No.855/2025 challenging the decision of the 30th CoC meeting deciding to liquidate the Corporate Debtor. The only grievance, which was restricted to be retained in the memorandum filed by the Appellant (i.e., the consortium of Successful Resolution Applicant), was with regard to refunding the Performance Bank Guarantee (PBG) deposited by the Applicant, while submitting its Resolution Plan along with interest thereon. The reason assigned by the Appellant to the said memorandum was that, since the CoC of the Corporate Debtor had made up its mind for liquidation and not to implement the approved plan, it would not be possible to implement the plan without the cooperation of the CoC. The Applicant sought the withdrawal of the application, being IA No.855/2025 preferred by the Appellants. Consequently, in the memo of 19.08.2025, the following relief was modulated: -

"In view of the above facts and circumstances, it is prayed that the Applicant may be permitted to withdraw the present application and this Hon'ble Tribunal may direct the Resolution Professional to

refund the performance bank guarantee amount together with interest accrued thereon immediately."

5. In the relief sought as extracted above, the Appellant, the consortium of Successful Resolution Applicants, had sought for a refund of the Performance Bank Guarantee (PBG), alleging that it was payable to them along with the interest, which had accrued on it. It's from this stage that the dispute has emerged. By the impugned order, the Learned Adjudicating Authority has partially granted the relief as prayed for in the aforesaid memo for refunding the Performance Bank Guarantee (PBG,) which has been furnished in pursuance to the Letter of Intent issued on 13.03.2024 and as per RFRP and deposited on 16.03.2024, however the interest component was denied to be paid.

6. The memorandum thus preferred by the Appellant was responded to by the Resolution Professional by filing a reply to it on 05.09.2025. The Resolution Professional pleaded to permit the withdrawal application filed by the Resolution Professional to refund Performance Bank Guarantee, but to reject the claim of the Applicant for the refund of the interest component of the Performance Bank Guarantee (PBG); and further that, the refund of the Performance Bank Guarantee (PBG) should be made strictly in accordance with RFRP (Request for Resolution Plan) that is without any interest on it whatsoever.

7. The Resolution Professional contended that the Appellants (the consortium of Successful Resolution Applicant), would not be entitled for the interest component on the Performance Bank Guarantee. Owing to the fact that the Performance Bank Guarantee (PBG) furnished by the present Appellants (the consortium of Successful Resolution Applicant), has not been deposited with an object of accrual of interest on it, rather it was deposited only by way of a mechanism to ensure to secure an assurance of performance of an act to be performed under the Letter of Intent. Hence, he submitted that since the request for the Resolution Plan, which governs the rights of obligations, its binding on both parties and it in its Clause 1.9.1 of the RFRP provides as under that on refund of the Performance Bank Guarantee, no interest would be payable on it, the relevant Clause 1.9.1 of RFRP is extracted hereunder: -

> *"Both participation fees and BBG including the future payments, if any, shall be refundable without any interest if Resolution Plan is not accepted by the CoC".*

8. On a simpliciter reading of the aforesaid expression, it prescribes that the participation fee and the Performance Bank Guarantee (PBG) are made refundable, if the plan is not accepted, by the CoC, but with a rider that it would be without any interest.

9. We are of the view that, as far as the payment of interest on the Performance Bank Guarantee (PBG) is concerned, it would be subject to the

condition that the aforesaid clause as enshrined in the terms of the Letter of Intent itself, or RFRP document, which is the basis of furnishing claim or refund of the Performance Bank Guarantee (PBG). Interest cannot be a self-created fiction, which could be claimed by the Appellant as a right by filing of an application, for withdrawal of PBG. The Appellant would be under the contracting laws, bound by the terms of the Letter of interest as well as the RFRP document, which has been the basis for laying down the governing terms and conditions leading to the issuance of the Letter of Intent, which has been accepted by the Appellant and is bounded by it and Appellant now cannot resile from it.

10. While challenging the impugned order, the Learned Counsel for the Appellant submitted that, the said aspect of the payment of interest had not even been addressed upon by the Learned Tribunal, while passing the impugned order. But if we goes through the impugned order itself, and the observation that has been made in the impugned order, the Learned Tribunal has observed that the Successful Resolution Applicant sought a refund of the Performance Bank Guarantee (PBG) with interest, that means the Learned Tribunal at the time of passing of the impugned order was conscious of the fact that there were two claims, which were raised by the Appellant before the Learned Tribunal i.e., for the payment of the Performance Bank Guarantee (PBG), and that too along with interest. There were two different components of refund sought, which were the subject matter of consideration

before the Learned Tribunal. In the subsequent line of the impugned order, the Tribunal has only directed to refund the Performance Bank Guarantee only. It is self-imbibed in the order, that the relief which was sought by the Appellant in this Application for payment of the interest stood denied and only the limited or partial relief was granted which is for the payment of Performance Bank Guarantee (PBG). So, it cannot be said that the Learned Tribunal had not considered the aspect of interest eventhough the Successful Resolution Applicant has sought for and by reference there was a denial made by the Learned Tribunal and only part of the relief as claimed for by the Appellant with respect to Performance Bank Guarantee was granted, that mean that was a consideration and denial, hence it cannot be said that the Tribunal had not addressed in the issue of interest. Thus, the contention is not accepted.

11. Apart from the fact that the Appellant was otherwise not entitled, either under the terms of the RFRP/Letter of Intent or even under law, to be paid with the interest on the Performance Bank Guarantee (PBG), which they had deposited in response to the Letter of Intent dated 13.03.2024. The order, which has been passed by the Learned Tribunal, does not suffer from any error except for the fact, which was being argued by the Appellant that he was not heard on the issue, though for the reason above is not acceptable by us. We have heard the Learned Counsel for the Appellant with regard to its claim of entitlement to interest on the said amount of Performance Bank

Guarantee. There is no material as such which has been placed before us to substantiate a case at all; that the Appellant would be legally entitled to the grant of the interest on the Performance Bank Guarantee (PBG).

12. In the closing stages of the argument, when the Appeal was being concluded, the Learned Counsel for the Appellant had sought to seek permission to place on record the recall application, which he had preferred before the Learned Tribunal seeking recall of the impugned order of 10.09.2025. We feel that filing of a recall application before the Learned Tribunal at this stage of hearing of the Company Appeal or even its subsequent withdrawal application filed by the Appellant will have no bearing as far as the merits of the instant Company Appeal is concerned, which has to be independently decided, exclusively, considering the merits of the impugned order of 10.09.2025.

13. Hence filing of the said recall application would not be relevant for the instant controversy, nor would it facilitate in deciding the appeal. We are not permitting the Appellant to develop his case, which has otherwise not been pleaded, on that basis, which is otherwise not relevant for the purposes of the instant Company Appeal.

14. Under the laws relating to contract, the terms and conditions of the contract that governs a monetary relationship resulting into effecting any of the business transactions, such terms and conditions, either being of the offer

or the conditions which would be later governing the relationship leading to the execution of the work or object under the contract, will always be sacrosanct. It will have a binding effect till the cessation of the contract itself, which cannot be permitted to be resiled or override by either of the parties to the contract by waiving off any of the conditions that had already been provided under such contract, or by attempting to introduce something which is not otherwise agreed between the parties before entering into the contract. Hence, the claim of interest as raised by the Appellant, in the memorandum of withdrawal in the IA No.855/2025 cannot be permitted to be introduced by virtue of a memorandum, which is not even a claim reserved to be agitated under the terms of the contract, which otherwise also is not a reckoned procedure under law.

15. Hence, we can conclude that under any contractual obligations or when an inter se relationship is governed by the two contracting parties, their rights and liabilities are exclusively and strictly governed by the terms and conditions contained in it, and they cannot claim much or anything beyond what has been agreed and settled between the parties under the terms of the contract. The Letter of Intent/Request for Resolution Plan itself takes the shape of the terms of the contract, in response to which the Appellant had deposited a Performance Bank Guarantee (PBG). Remittance of interest or the refund of the Performance Bank Guarantee (PBG) followed by an interest, was not a condition precedent in the Letter of Intent, nor has it been

shown otherwise. In that eventuality, we find no merit in the instant Company Appeal; the Company Appeal lacks merit and the same is accordingly dismissed. All pending Interlocutory Applications, if any, would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

VG/MS/AK