NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 748 of 2023

IN THE MATTER OF:
Vadilal Industries Ltd. ...Appellant

Versus

Fanendra Munot & Ors. ...Respondents

Present:

For Appellant: **Mr. Sandeep Grover and Ms. Richa Deshpande, Advocates.**

For Respondents: **Mr. Rajat Sinha, Mr. Madhur Jhavar, Advocates for RP. Mr. Gaurav Mitra, Ms. Lavanya Pathak, Mr. Prashant Puri, Advocates for SRA.**

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

Vaishno Devi Foods Pvt. Ltd. (Corporate Debtor) was admitted into Corporate Insolvency Resolution Process (CIRP) on 27.10.2020 on an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code').

2. IRP made public announcement on 12.11.2020 for the claims to be submitted to him and the last date for submission of claim was fixed as 24.11.2020.

3. The Appellant filed its application in Form B on 19.03.2022 which was rejected by the RP.

4. It is pertinent to mention that the resolution plan jointly submitted by Sharda Constructions & Corporation Pvt. Ltd. and Vikram Infratech Developers Pvt. Ltd. was approved by the CoC in its 11th CoC meeting held on 18.10.2021 whereas the claim in Form B was filed much after on 19.03.2022.

5. Aggrieved against the rejection of the claim by the RP, the Appellant filed I.A. No. 1106 of 2022 before the Tribunal that it came to know about the initiation of CIRP against the Corporate Debtor when the Respondent preferred an I.A. No. 2919 of 2021 for recovery of Rs. 30,42,900/- but the claim of Rs. 6,05,09,000/- filed in Form B on 19.03.2022 was rejected by the Respondent on the ground of delay.

6. The application No. 1106 of 2022 has been dismissed by the Tribunal vide its impugned order dated 31.03.2023 and hence, the present appeal.

7. The present appeal was filed only after impleading the RP of the CD but on 03.07.2023, Counsel appearing on behalf of the Appellant

made a statement that on 31.03.2023 while I.A No. 1106 of 2022 was dismissed the resolution plan submitted by the resolution applicant was approved on an application filed by the RP bearing I.A. No. 2946 of 2021 under Section 30(6) and 31 of the Code, therefore, on 03.07.2023 the following order was passed by this Court:-

> Learned counsel for the Appellant submits that by the order of the same date i.e. 31.03.2023, the Resolution Plan has also been approved. He prays for adjournment of the Appeal to enable him to file a separate Appeal challenging the order approving Resolution Plan. Appellant is also permitted to amend the Memo of Parties impleading the Successful Resolution Applicant and the Monitoring Committee. List this Appeal on 12.07.2023.

8. On 19.07.2023 this Court also passed the following order:-

> "C.A. (AT) Ins. No. 748 of 2023: Learned Counsel for the Appellant submits that the claim filed by the Appellant was rejected as barred by time whereas it was well within time which was allowed by Hon'ble Supreme Court in Suo Motu Writ Petition No. 03 of 2020. Company Appeal (AT) (Insolvency) No. 913, 748/2023
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> 2. He has filed Amended Memo of Parties. Issue notice to the Respondents through Speed Post as well as Email. Requisites along with process fee, if not filed, be filed within two days.
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> 3. Mr. Gaurav Mitra, Learned Counsel appearing for the Successful Resolution Applicant as Respondent accepts

> notice. Learned Counsel appearing for IRP also accepts notice.
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> 4. Let Reply Affidavits be filed within three weeks. Rejoinder may be filed within two weeks, thereafter.
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> List this Appeal on 04th September, 2023.
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> C.A. (AT) Ins. No. 913 of 2023: Learned Counsel for the Appellant prays that he may be permitted to withdraw this Appeal to enable him to file appropriate application in C.A. (AT) Ins. No. 748 of 2023 where order dated 31st March, 2023 approving the Resolution Plan also is under challenge. The Appeal i.e. C.A. (AT) Ins. No. 913 of 2023 is dismissed as withdrawn."

9. As per the aforesaid order, the appeal filed by the Appellant bearing CA (AT) (Ins) No. 913 of 2023 to challenge the approval of the resolution plan was withdrawn by it but the Appellant filed I.A. No. 3892 of 2023 for amendment of the present appeal which was allowed on 12.10.2023 and the said order read as under:-

> "I.A. No. 3892 of 2023: Heard learned counsel for the parties. This is an application praying for amendment in the appeal as prayed in the application.
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> 2. Counsel for the Appellant submits that in the appeal which was initially filed the relief clause challenged both the orders; order dated 31.03.2023 approving the Resolution Plan and order dated 31.03.2023 rejecting I.A. filed by the Appellant for admitting claim of the Appellant.
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> 3. Learned counsel for the Respondent submits that Appellant has filed separate Appeal challenging approval of

the Resolution Plan which was withdrawn on 19.07.2023, hence, this amendment application be not allowed. It is submitted by the Respondent that subsequent Appeal was also barred by time.

4. Be that as it may. We are of the view that in the present Appeal Company Appeal (AT) (Ins.) No. 748 of 2023 both the orders were challenged in the relief clause. Amendment as prayed can be allowed. I.A. No. 3892 of 2023 is allowed.

5. Let the amendment in the Appeal be carried out and afresh Amended Appeal be filed by the Appellant within two weeks.

6. Let Reply be filed by the Respondents within two weeks to the Amended Appeal.

List the Appeal on 20.11.2023."

10. Grievance of the Appellant in this appeal is that the claims submitted by it has wrongly been rejected, firstly by the RP and secondly by the Tribunal on the ground of delay though the Hon'ble Supreme Court while passing the order in suo motu writ petition (c) no. 3 of 2020 in re:cognizance for extension of limitation directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings and the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from

01.03.2022. He has also relied upon a decision of the Hon'ble Supreme Court in the case of GPR Power Solutions Pvt. Ltd. Vs. Mr. Supriyo Chauduri, 2021 SCC Online SC 1328. He has further submitted that the claim of the creditors cannot be rejected on the sole ground of delay and has referred to a decision of the Hon'ble Supreme Court in the case of State Tax Officer (1) Vs. Rainbow Papers Limited, 2022 SCC Online SC 1162. Counsel for the Appellant has further argued that the claims are extinguished after the approval of the resolution plan by the Tribunal and in this regard relied upon a decision of this Court in the case of Puneet Kaur Vs. K.V Developers Pvt. Ltd. And Others, 2022 SCC Online NCLAT 245. It is also submitted that it is the duty of the RP to ensure that the plan submitted by the resolution applicant complies with Section 30(2) of the Code before forwarding it to the CoC for approval and has relied upon a decision in the case of Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr., (2024) 6 SCC 122. Counsel for the Appellant has further submitted that even if the plan has been approved and implemented during the pendency of the appeal, the Tribunal has the powers to allow the claims of the Appellant which can be adjusted because there is an error committed by the RP in rejecting the claim and has referred to a decision of this Court in the case of Synergy Technology Pink Bunglow Vs. Parthik Parikh, RP of Sanghvi Forging & Engineering Limited & Ors. 2022 SCC OnLine NCLAT 2797.

11. On the other hand, Counsel for Respondent No. 1 has submitted that the appeal is liable to be dismissed because the claim was submitted by the Appellant after the plan was approved by the CoC, plan having been fully and finally implemented and the Appellant was not a bona fide litigant. It is submitted that the Appellant entered into a purchase agreement in 2018 with the CD to purchase Skimmed Milk Powder (SMP). The Corporate Debtor supplied a total of 87 tons of SMP but failed to complete the transaction. The Appellant filed a suit for specific performance before the Civil Court, Ahmedabad against the CD for directions to the CD to supply the remaining quantity of SMP but while the said suit was pending, the CD was admitted into CIRP on 27.10.2020 as a result of which the Respondent No. 1 issued the public announcement on 11.11.2020 under Section 15 of the Code and last date was fixed as 24.11.2020 to submit claims. Before the Appellant

could have filed the claim, the CoC in its 11th meeting, constituting all financial creditors of the CD, held on 18.10.2021, approved the resolution plan of the SRA. The Appellant filed the claim five months thereafter on 24.03.2022 which was rejected by Respondent No. 1 on the same day on the ground that it was filed belatedly pursuant to which the Appellant filed an application i.e. 1106 of 2022 before the Tribunal on which the impugned order was passed on 31.03.2023 and on the same day the resolution plan was also approved on an application filed by the Respondent No. 1.

12. Counsel for Respondent No. 1 has submitted that the claim of the Appellant could not have been admitted after the resolution plan was approved by the CoC and in this regard relied upon a recent decision of the Hon'ble Supreme Court in the case of M/s RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr., Civil Appeal No. 5590 of 2021 decided on 11.09.2023. It is submitted that the Hon'ble Supreme Court took note of the fact that IBC is a time bound process, the Appellant being commercial entity was litigating against the CD and that the Appellant ought to have been vigilant and being deficient on that count, its claim cannot be entertained at the stage

after approval of the plan by the CoC as it would invariably make CIRP an endless process. He has also submitted that public announcement would constitute deemed knowledge and relied upon a judgment in the case of CoC of Essar Steel India Limited through Authorized Signatory Vs. Satish Kumar Gupta & Ors. (2020) 8 SCC 534. He has further submitted that once the CoC has approved the resolution plan, admitting a claim thereafter would amount to unleashing of the hydra-headed monster of undecided claims on the resolution applicant. It is also argued that the decision in the case of Suo Motu writ petition (c) no. 3 of 2022 and GPR Power (Supra) would not apply because the decision in the case of RPS Infra (Supra) is later in time and has held that once the CoC approved the resolution plan then no claim can be admitted. It is also submitted that the judgment in the case of RPS Infra (Supra) has been followed by this Hon'ble Court in Suraksha Realty Ltd. Vs. Anuj Bajpai, CA (AT) (Ins) No. 1389 of 2023 and Department of State Tax Vs. Dar Media Pvt. Ltd. & Anr., CA (AT) (Ins) No. 73 of 2024. It is further submitted that the appeal has also become infructuous because of the fact that the plan has been fully and finally implemented. The CD has been handed over to Respondent No. 2 and 3 (SRA), therefore, at this stage it would be highly prejudicial to the rights of R2 and 3 if the case is reopened. It is also submitted that the claim of the Appellant being an operational creditor is contingent in nature and cannot be adjudicated by the Respondent No. 1 even if the same is admitted. Therefore, the present appeal is academic in nature and would not confer any monetary claim to the Appellant. In this regard, he has referred to a decision of this Court in the case of Central Transmission Utility of India Vs. Ashish Chhwacchria, RP, Essar Power Limited & Ors., CA (AT) (Ins) No. 25 of 2022 in which this Court has held that the decision of the RP to admit a contingent claim at a nominal value of Rs. 1 and in the same decision approved NIL value being given to such OCs. In the end, it is submitted that the Appellant is not a bona fide litigant because the Appellant had already filed a suit before the Civil Court, Ahmedabad for specific performance i.e. to supply the remaining SMP in terms of the purchase order and alternatively, recovery of a sum of Rs. 6,05,09,000/- on account of financial loss which is the subject matter of the application filed under Section 60(5) of the Code by the Appellant. The said suit is stated to be pending, therefore, the Appellant cannot pursue two remedies before two different forums and is indulging in forum shopping.

13. We have heard Counsel for the parties and perused the record.

14. There is no dispute in regard to the fact that public announcement was made on 11.11.2020 and the last date to file the claim was 24.11.2020. There is also no dispute that the application has been filed by the Appellant on account of loss suffered for which the Appellant has already filed a civil suit on 14.10.2019 before the Civil Court, Ahmedabad in which two prayers have been made, namely, for supplying remaining SMP in terms of the purchase order and recovery of a sum of Rs. 6,05,09,000 on account of financial loss. It is not in dispute as well that the application has been filed in respect of the claim of Rs. 6,05,09,000 regarding which civil suit has already pending, however, in any case, the Appellant has admittedly filed the claim in Form B on 19.03.2022 much after 18.10.2021 when the members of all the CoC in its 11th meeting approved the plan submitted by the resolution applicant. The Tribunal dealt with the application bearing I.A. No. 1106 of 2022 filed by the Appellant to challenge the decision of the RP by

which the claim of the Appellant was rejected on the ground of delay as well as I.A No. 2946 of 2021 filed by the RP of the CD under Section 30(6) and 31 of the Code for approval of the resolution plan, approved by the CoC on 18.10.2021. Incidentally, the application bearing I.A. No. 1106 of 2022 filed by the Appellant was dismissed and I.A. No. 2946 of 2021 was allowed on the same day. The Appellant chose to file the appeal no. 748 of 2023 against the order passed in I.A. No. 1106 of 2022 as well as appeal no. 913 of 2023 against the order passed in I.A No. 2946 of 2021. It is not in dispute that the appeal no. 913 of 2023 was withdrawn by the Appellant. The contention of the Appellant is that the claim was filed on 19.03.2022 during the period when the order passed in suo motu writ petition (c) no. 3 of 2022 by the Hon'ble Supreme Court, therefore, the period was condonable. He has also argued that the claim can be extinguished only after approval of the resolution plan by the Tribunal and has relied upon a decision of this Court in the case of Puneet Kaur (Supra) but after the decision of the Hon'ble Supreme Court in the case of M/s RPS Infra (Supra) in which the issue was as to whether the appellant's claim pertaining to an arbitral award, which is in appeal under Section 37 of the said Act, is liable to be included at a belated state i.e. after the resolution plan has been approved by the CoC and the answer to this question was given by the Hon'ble Supreme Court in the following paragraphs which read as under:-

> "19. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.
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> 20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.
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> 21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above,

> in Essar Steel,8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC."

15. We shall also respectfully follow the dicta of the Hon'ble Supreme Court in the case of M/s RPS Infra (Supra) which is a judgment delivered by the Hon'ble Supreme Court on 11.09.2023 much after the decision in the case of GPR Power (Supra) decided on 29.11.2021 holding therein that once the CoC has approved the plan then no claim is to be entertained.

16. Thus, in our considered opinion, there is no error committed by the Tribunal in rejecting the application of the Appellant and rejecting its claim. The appeal is thus found without any merit and the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Barun Mitra]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

New Delhi
16th December, 2024
Sheetal