Noida Special Economic Zone Authority vs Manish Agarwal on 5 November, 2024

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Bench: Abhay S. Oka

2024 INSC 839

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5918-5919 OF 2022

Noida Special Economic
Zone Authority … Appellant

Vs.

Manish Agarwal & Ors. … Respondents

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. In the present Appeals challenge is to the Judgment dated 14.02.2022 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as "NCLAT") which were preferred by the Appellant, i.e., NOIDA Special Economic Zone Authority, being the Operational Creditor 17:13:03 IST Reason:

> (hereinafter referred to as "Appellant") impugning the Order dated 05.10.2020 passed by the Adjudicating Authority of National Company Law Tribunal, New Delhi Bench (hereinafter referred to as "NCLT") approving the Resolution Plan as presented on the approval by the Committee of Creditors, and also the Order dated 27.11.2020 vide which an application preferred by the Appellant, challenging the approval of the Resolution Plan, stood rejected.

2. Briefly, the facts are that the Respondent No.02, i.e., Shree Bhoomika International Limited, being the Corporate Debtor (hereinafter referred to as "Corporate Debtor") was sub-leased the Plot bearing No. 59-I admeasuring 16,100 square meters at NOIDA Special Economic Zone (hereinafter

referred to as "NSEZ") by the Appellant, in capacity of lessee of the said land from the NOIDA Authority, vide Lease Deed dated 26.10.1995, and it was valid for a period of 15 years, i.e., up to 31.05.2010. It is the case of the Appellant that the Corporate Debtor had begun defaulting on lease payments in 1999, and moreover, there was no performance or activity on the said land since the year 2003-2004 leading to financial losses to the Government Exchequer, and same also being violative of the Special Economic Zone Rules and guidelines framed therein. Appellant has also made a reference to a Public Notice dated 06.02.2018 by the Stressed Assets Stabilization Fund for sale of immovable and movable assets of the Corporate Debtor through an e-auction, fixing the total reserved price at INR 09.18 Crores.

3. In the light of the defaults committed by the Corporate Debtor, Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") was initiated by the Appellant before the NCLT. While admitting the said application on 11.07.2019, an Interim Resolution Professional (hereinafter referred to as "IRP") was appointed. The Committee of Creditors, which comprised of the Sole Financial Creditor, being the Stressed Assets Stabilization Fund – IDBI Bank Limited (hereinafter referred to as "sole Financial Creditor") was constituted by the IRP after making a public announcement on 17.07.2019 as per the prescribed procedure.

4. In pursuance thereto, the Appellant filed a claim of INR 6,29,18,121/- (Rupees Six Crores Twenty Nine Lakhs Eighteen Thousand and One Hundred Twenty One only) which was admitted by the Respondent No.01 – Resolution Professional (hereinafter referred to as "RP") in entirety. Valuation of the Corporate Debtor was thereby conducted by two different valuers, and an average thereof was carried out, leading to the fixing of the liquidation value of the Corporate Debtor at INR 04.25 Crores. The Appellant had put forth that the valuers had also observed that the valuations derived by them could be realised, subject to fulfilment of the rules of NSEZ and procedure of approval thereof.

5. The Resolution Plan dated 24.11.2019 (hereinafter referred to as "Resolution Plan"), which was prepared by the Respondent No. 03 – M/s Commodities Trading, being the Resolution Applicant (hereinafter referred to as "Resolution Applicant") was put before the Committee of Creditors, which approved it in its 4th Meeting dated 06.01.2020.

6. An application was then filed under Sections 31(1) and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC 2016") before the NCLT by the RP, seeking an approval of the Resolution Plan on behalf of the Committee of Creditors. The same was allowed by NCLT vide Order dated 05.10.2020, granting only INR 50 Lakhs to the Appellant against its admitted claim of INR 06.29 Crores. Aggrieved, the Appellant put forth its objections before the RP to the Resolution Plan and claimed payment of the entire amount of INR 06.29 Crores from the Corporate Debtor, leaving open the legal remedy to recover the full dues, in case the same was not accepted.

7. Being at loggerhead with the RP with respect to the payment of admitted claim, the Appellant moved an application before the NCLT challenging the Order dated 05.10.2020, which approved the Resolution Plan. This was dismissed vide Order dated 27.11.2020, observing that the said tribunal did not have the jurisdiction to accept the prayer made in the application, which would amount to

setting aside of the Resolution Plan, and the Appellant had the remedy of filing an appeal before the NCLAT.

8. Thereafter, the Appellant moved appeals under Section 61 of IBC 2016 before the NCLAT, challenging both the orders, as referred to above. These appeals were also dismissed vide the impugned Judgment dated 14.02.2022.

9. The grievance put forth by the Appellant is with regard to the Appellant not being informed about the auction proceedings which were initiated at behest of the RP, thus, depriving it of its participation in the said proceedings. Once the total claim had been admitted by the RP, which was clearly indicated in the Resolution Plan, the said amount should have been disbursed to the Appellant prior to the claim of the other claimants, including the sole Financial Creditor.

10. Another aspect which has been pressed into service is with regard to Clause 10.9 of the Resolution Plan, as regards the exemptions from the NSEZ, asserted to be in direct contravention and contradiction to their established rules and principles of the functioning of the NSEZ. The Appellant, which works under the guidance of the Ministry of Commerce and Industry, Government of India, could not have been commanded relating to its functions by the RP, especially with regard to the charges or penalties relatable to the change in any business model for transfer of units by the original allottee. The attempt to by-pass the payment of statutory fee would be an unjust enrichment to the Resolution Applicant, thus, contradicting Section 34(2)(d) of the Special Economic Zone Act, 2005 (hereinafter referred to as “SEZ Act, 2005”).

11. The Appellant even challenged the fair and liquidation valuation of the Corporate Debtor being conducted by the two valuers. It was so challenged on the ground that no physical inspection of the property in question was carried out by the said valuers. A reference in this regard was made to Regulation 35(1)(a) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (hereinafter referred to as “IBBI Regulations 2016”), which required physical verification of the Corporate Debtor.

12. At the cost of reiteration, the Appellant invariably pressed over and over again assignment of only INR 50 Lakhs as against the admitted claim of INR 6,29,18,121/- (Rupees Six Crores Twenty Nine Lakhs Eighteen Thousand and One Hundred Twenty One only).

13. The learned Senior Advocate appearing for the Appellant has vehemently put forth the submissions as recorded above and has also referred to the statutory provisions before this Court. On considering the same, going through the impugned judgment dated 14.02.2022 passed by the NCLAT and the records, we are not persuaded to take a different view.

14. As regard the fair value and liquidation value of Corporate Debtor, as derived by the valuers is concerned, this Court in Duncans Industries Ltd. v. State of U.P. and Others1 held that the question of valuation is basically a question of facts, which does not call for any interference if it is based on relevant material on record. As stated above, the average of the two closest estimates given by the valuers were taken into consideration as fair value and liquidation value respectively, which were

found to be just and reasonable. This would be, keeping in view Section 35C of IBC 2016, where the powers and duties of the liquidator have been laid down. Since due process appears to have been followed no fault is found requiring interference.

15. Sections 30 and 31 of IBC 2016, which deal with the submission of the Resolution Plan has rightly been evaluated and analysed NCLAT as per the 1 (2000) 1 SCC 633 ratio laid down by this Court in Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others2, Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited and Others3, and K. Sashidhar v. Indian Overseas Bank and Others4, reference thereof has been made by the NCLAT in extenso. Conclusion as culled out and elucidated is correct that all the dues, including statutory dues owned by the Central Government, State Government and local authority, which is not the part of the Resolution Plan shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority had approved the Resolution Plan 2 (2020) 11 SCC 467 3 (2021) 9 SCC 657 4 (2019) 12 SCC 150 could be pressed into service or continues. These observations took care of the assertions of the Appellant with regard to the statutory dues and the claims as have been made and put forth relatable to the areas of lease.

16. Beside this, as regards the other claims pertaining to the transfer fees, etc. were not to be interfered with by courts or tribunals as the same stood related to the commercial wisdom of the Committee of Creditors for they being the best persons to determine their interests, and any such interference is non-justiciable except as provided by Section 30(2) of IBC 2016. We do not find violation of the statute or the procedure as also the norms fixed as per the decisions referred to above of this Court, the Resolution Plan as approved by the Committee of Creditors, and the same having been accepted deserves and has rightly been left untouched.

Fundamentally, the financial decisions as have been taken by Committee of Creditors, especially with regard to viability or otherwise, while evaluating the plan would thus prevail.

17. As far as the submission of the Learned Senior Counsel that exemptions from NSEZ payments, including any type of fees or penalty for renewal of sub-lease and/or for transfer charges due with regard to the change of directorship or shareholding in favour of the Resolution Applicant has to be dealt with as per Clause 10.9 of the Resolution Plan cannot be accepted in the light of Section 238 of IBC 2016, which provides for the provisions of IBC 2016 to have an overriding effect over the other laws. If that be so, the obvious effect is that the same would prevail, leading to the provisions as contained in the SEZ Act 2005 giving way to IBC 2016.

18. It has come on record and stands admitted that the Resolution Plan had already been implemented and the dues as found payable under the Resolution Plan have been disbursed to the concerned parties. As regards the Appellant is concerned, the amount was disbursed vide Demand Draft dated 22.10.2020 which has been received and accepted by the Appellant. Leading to the dismissal of the appeal vide impugned Judgment dated 14.02.2022.

19. In the light of above and having perused the record while bearing in mind the extensive observations made by 3-Judge Bench of this Court in Committee of Creditors of Essar Steel India

Limited v. Satish Kumar Gupta and Others5, and its reiteration by numerous subsequent decisions of this Court such as the Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another6 and in the latest decision in DBS Bank Limited Singapore v. Ruchi Soya Industries Limited and Another7, we find ourselves not in a position to accept the claim of the Appellant as sought to be made and put forth in these appeals.

20. The Orders dated 05.10.2020 and 27.11.2020, as have been passed by the NCLT and approved by the NCLAT vide its impugned Judgment dated 14.02.2022, do not call for any interference in the 5 (2020) 8 SCC 531 6 (2022) 2 SCC 401 7 (2024) 3 SCC 752 present Appeals. The appeals being devoid of merit, stand dismissed.

21. There shall be no order as to costs.

22. Pending application(s), if any, also stand disposed of.

..... J.

(ABHAY S. OKA) .....J. (AUGUSTINE GEORGE MASIH) New Delhi;

November 05, 2024.