

M/S Ess Investments Pvt. Ltd. vs Lokhandwala Infrastructure Pvt. Ltd. on 31 January, 2020

Bench: Indira Banerjee, Sanjiv Khanna

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) . 324/2020

M/S ESS INVESTMENTS PVT. LTD.

VERSUS

LOKHANDWALA INFRASTRUCTURE PVT. LTD. & ANR.

WITH
C.A. No. 325/2020
SLP(C) No. 222/2020
SLP(C) No. 451/2020

O R D E R

1. The appellant filed a petition against the Respondent No.1 before the National Company Law Tribunal (NCLT) Mumbai being CP(IB) No.4000/MP/2018 under Section 7 of the Insolvency and Bankruptcy Code 2016 (for short 'the IBC'), claiming Rs.1,76,87,356/- along with interest @ 13% per annum.
2. Three other similar petitions including a petition of Dalmia Group Holdings being CP No.1023/MP/2019 were filed against the Respondent No.1 under Section 7 of the IBC.
3. By an order dated 8.8.2019, the petition being CP No.1023/MP/2019 filed by Dalmia Group Holdings was admitted and an order was passed on 19.9.2019 of commencement of the resolution process by appointment of an Interim Resolution Professional (IRP). The IRP issued notices in newspapers inviting claims from all creditors, pursuant to which the Appellant filed its claim before IRP.
4. However, on or about 10.10.2019 the Respondent No.1 settled its disputes with Dalmia Group Holdings. An appeal filed by the Respondent No.1 before Appellate Tribunal (NCLAT) being Company Appeal (AT) (Insolvency) No.1061 of 2019 was disposed of by setting aside the order dated 19.9.2019, but not the order dated 8.8.2019 whereby C.P. No. 1023/MP/2019 filed by Dalmia Group Holdings had been admitted. It is submitted that the attention of NCLT was not drawn to the claims of other creditors of Respondent No.1.

5. In the meanwhile, by an order dated 4.9.2019 the petition of the appellant was rejected by NCLT on the ground of admission of the petition of Dalmia Group Holdings on 8.8.2019. It is argued that the NCLT had made an observation that the Appellant might file its claim before the IRP to be appointed in CP No.1023/MP/2019 filed by Dalmia Group Holdings, though this was not recorded in the order dated 4.9.2019.

6. Since the disputes between the Respondent No.1 and Dalmia Group Holdings has been settled and the order dated 19.9.2019 has been set aside, it will be open to the appellant to proceed against the Respondent No.1 before the NCLT by seeking recall of the order dated 4.9.2018 and revival of its application No.CP(IB) No.4000/MP/2018.

7. Civil Appeal No.324/2020 is disposed of accordingly.

8. Needless to mention, all contentions are kept open. This order will govern SLP (C) No.222/2020, SLP (C) No.451/2020 and C.A. No.325/2020, which are also disposed of.

9. Pending application(s), if any, shall stand disposed of. Delay condoned.

.....J. [INDIRA BANERJEE]J. [SANJIV KHANNA] NEW DELHI;

JANUARY 31, 2020.

ITEM NO.47

COURT NO.16

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

M/S ESS INVESTMENTS PVT. LTD.

APPELLANT(S)

VERSUS

LOKHANDWALA INFRASTRUCTURE PVT. LTD. & ANR.

RESPONDENT(S)

(IA No.197674/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.197672/2019-PERMISSION TO FILE APPEAL) WITH C.A. No. 325/2020 (XVII) (IA No.163/2020-EX-PARTE AD-INTERIM RELIEF and IA No.162/2020- EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.161/2020-PERMISSION TO FILE APPEAL) SLP(C) No. 222/2020 (XVII) SLP(C) No. 451/2020 (XVII) (FOR ADMISSION and I.R.) Date : 31-01-2020 These matters were called on for hearing today. CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE HON'BLE MR. JUSTICE SANJIV KHANNA For Appellant(s) Mr. Sidhartha Dave,Sr.Adv.

Mr. Firdaus Moosa,Adv.

Mr. Chandra Bhushan Prasad, AOR Ms. Sukriti Bhardwaj,Adv.

For Respondent(s) Mr. Yusuf Iqbal,Adv.

Mr. Bhavay Sethi,Adv.

Ms. Gyanika Kochar,Adv.

Mr. Anil Rao,Adv.

Mr. Deepak Anand, AOR Mr. Shikhil Suri,Adv.

Mr. Shiv Kumar Suri,Adv.

Ms. Shilpa Saini,Adv.

UPON hearing the counsel the Court made the following O R D E R These appeals and special leave petitions are disposed of in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(JAGDISH CHANDER)
COURT MASTER

(Signed order is placed on the file)