

Mohammed Enterprises (Tanzania) Ltd vs Farooq Ali Khan on 3 January, 2025

Author: Pamidighantam Sri Narasimha

Bench: Pamidighantam Sri Narasimha

2025 INSC 25

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 48/2025
Arising out of SLP (C) No. 11599 OF 2024

MOHAMMED ENTERPRISES (TANZANIA) LTD.

...APPELLANT(S)

VERSUS

FAROOQ ALI KHAN & ORS.

...RESPONDENT(S)

WITH
CIVIL APPEAL NO. 49/2025
Arising out of SLP (C) No. 11095 OF 2024

WITH
CIVIL APPEAL NO. 50/2025
Arising out of SLP (C) No. 13493 OF 2024

JUDGMENT

1. Leave Granted.

2. These appeals under Article 136 of the Constitution are against the judgment of the High Court of Karnataka exercising power of judicial review¹ interdicting Corporate Insolvency Process culminating in the acceptance of a resolution plan by the Committee of Creditors in minutes of meeting dated 11.02.2020. In this batch of matters, there are three appeals, one by the successful resolution applicant METL, the other by the Bank comprising the Committee of Creditors, and the third appeal by the Resolution Professional appointed by the adjudicating authority to conduct CIRP

against Associate Decor Ltd (“Corporate Debtor”).

3. The short facts are that the Corporate Insolvency Resolution Proceedings were admitted against the corporate debtor at the instance of Oriental Bank of Commerce² (a financial creditor) on 26.10.2018. It is submitted by Dr Abhishek Manu Singhvi, Ld. Senior Advocate appearing on behalf of the successful resolution applicant that upon the resolution professional issuing the Information Memorandum under Section 29 of the Code on 28.11.2018, his client submitted his expression of interest. It is submitted that at the 16th, 17th and 18th meeting of the Committee of Creditors, resolution plans were discussed and deliberated. Further, even at the first adjourned ¹ In Writ Petition No. 483 of 2023 (GM-RES) dated 22.04.2024. ² Merged with Punjab National Bank in 2020.

meeting of the 19th COC, resolution plans were reviewed, and the appellant was asked to incorporate certain items, and the meeting was adjourned to 11.02.2020. It is submitted that one Mr. Sachin Misal, another director of the corporate debtor representing the suspended director, Mohd. Farouk Darvesh was present, and he confirmed that “they have no objection to the plans or to the process that was followed.” We may mention at this very stage that this fact is opposed by Mr. Shyam Divan, Ld. Senior Counsel representing the suspended director of the corporate debtor. Be that as it may, the resolution professional is said to have issued notice to the suspended directors of the corporate debtor on 11.02.2020, including respondent no.1, that the meeting will be held at 3.00 pm.

4. While the appellant contends that the second adjourned 19th COC meeting was convened after notice to all, Mr. Shyam Divan has submitted that no such notice was ever received by his client. In the meeting, a slightly revised, amended, and re-stated resolution plan was considered, deliberated upon by the COC and put to vote. The resolution plan is said to have been approved by the COC through e-voting on 11.02.2020, the appellants’ plan was approved and the resettlement proposal submitted by respondent no.1 was rejected. This decision of the COC led to the declaring of appellant as the successful resolution applicant unanimously by 100% voting share of the CoC.

5. In the meanwhile, there were certain proceedings initiated by yet another company named Swamitva, whose request for filing a resolution plan was rejected, leading to the said company filing an interlocutory application before the Adjudicating Authority seeking directions to the COC to reconsider the resolution plan. The Adjudicating Authority's decision to place the resolution plan for reconsideration by the CoC was appealed to the NCLAT. The appellant submitted that respondent no.1, the suspended director of the corporate debtor also filed an interlocutory application before the NCLAT seeking rejection of the resolution plan of the applicant on the same grounds that were raised before us. Having considered the appeal in detail, the NCLAT, by its order dated 19.09.2022, allowed the appeal and set aside the directions of the Adjudicating Authority.

6. In the meanwhile, even the appeal filed by Swamitva against the order of the NCLAT dated 19.02.2022 before this Court came to be dismissed by an order dated 25.11.2022.

7. It is in the above said background that first respondent approached the High Court of Karnataka by filing the writ petition seeking quashing of Minutes of Meeting dated 11.02.2020, letter of intent dated 09.03.2020, declaration of respondent no.1 as successful resolution applicant, direction to the CoC for acceptance of its proposal dated 07.12.2022 and for setting aside of Minutes of Meeting dated 21.12.2022, wherein the CoC Members had unanimously rejected the settlement proposal of respondent no.1. It is apparent from these prayers that the main grievance of the respondent no.1 was with respect to the decision of the Minutes of Meeting dated 11.02.2020, out of which all other orders and decisions have emanated.

8. The High Court initially granted ex-parte stay directing adjudicating authority to maintain the status quo, and finally by order dated 22.11.2023 allowed the writ petition whereby appellant's resolution plan was set aside. Review Petitions were filed by the consortium banks were allowed on 22.11.2023 and the writs were restored. However, by the impugned order dated 22.04.2024, the High Court again allowed the writ petition and set aside the resolution plan, primarily on the ground that principles of natural justice are violated as 24 hours' notice was not granted.

9. Mr. Tushar Mehta, Ld. Solicitor General supported Dr. Singhvi's submissions and objected to the High Court exercising jurisdiction under Article 226 interdicting proceedings under the Code. He referred to the decision of the court in CoC of KSK Mahanadai Power Company Limited v. M/S UP Power Corporation Limited³ taking exception to the High Court exercising its discretionary jurisdiction under Article 226 of the Constitution, breaching the discipline of alternate remedy as contemplated under the Insolvency and Bankruptcy Code.

10. Mr. Shyam Divan, Ld. Senior Counsel appearing for the Corporate Debtor had a three-fold submission. In the outset, he would submit that the writ petition under Article 226 is not barred, particularly when there is violation of the principle of natural justice. For this purpose, he relied on the decision of this Court in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.⁴ Secondly, he specifically referred to the provisions of the Code and in particular 3 Civil Appeal No. 11086 of 2024, dated 14.10.2024. ⁴ (1998) 8 SCC 1 to Section 12(A) of the IBC 2016, read with Regulation 19 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Through his short note of submissions, he would further submit that by contrasting the amounts submitted as per the information memorandum, it would be clear that the offer made by the resolution applicant is much inferior to the proposal made by the first respondent under Section 12(A) of the Code. Finally, he sought to clarify that there is no delay in filing the writ petition as the contest raised by Swamitva Consortium was pending between the cause of action and the filing of the writ petition.

11. Having considered the matter in detail, we are of the opinion that the last point taken by Mr. Shyam Divan, that there is no delay in approaching the High Court, must be rejected. The reason is this. The CIRP proceedings commenced on 26.10.2018. The sheet anchor of Mr. Divan submission and also the justification for the High Court to assume jurisdiction on the ground that principles of natural justice were violated, when respondent no.1 was not given a notice before the 19th COC meeting, occurred way back on 11.02.2020. However, the jurisdiction of the High Court was invoked only on 04.01.2023. The time gap between these two events is almost three years. The initiation and

continuation of proceeding by Swamitva Consortium before the Adjudicating Authority, NCLT or the Supreme Court cannot lend any justification whatsoever in approaching the High Court so late.

12. Further, it is also an admitted fact that on 06.10.2022, respondent no. 1 moved an interlocutory application before the Adjudicating Authority seeking rejection of the resolution plan filed by the appellant. The grounds taken in the interlocutory application are the same as those in this appeal. It is not as if the High Court was unaware of respondent no. 1 availing the statutory remedy under the Code. At least on this ground, the High Court should have relegated respondent no. 1 to the procedure under the Code and permitted him to continue the remedy that he has chosen to adopt. We may hasten to add that it is not necessary for us to enter into the merits of the matter to examine the amounts offered by respondent no. 1 and to contrast with the offer made by the applicant.

13. The jurisdiction and power of the Adjudicating Authority under Section 60(5)(c) has already been reiterated by this Court in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta⁵ and Gujarat Urja Vikas Nigam Limited v. Amit Gupta⁶. It is important to note that CIRP proceedings commenced on 26.10.2018, six years ago, and the resolution plan of the appellant was approved in 2020, four years back. The importance of concluding the CIRP proceedings was highlighted by this Court, on a number of occasions⁷. In a recent order in Committee of Creditors of KSK Mahanadi Power Company Ltd. v. M/s Uttar Pradesh Power Corporation Ltd (supra), this Court has observed that an unjustified interference with the proceedings initiated under the Insolvency and Bankruptcy Code 2016, breaches the discipline of law.

14. In view of the delay in approaching the High Court, particularly when respondent no.1 himself has initiated proceedings under the Code by filing interlocutory applications seeking similar relief, we are of the opinion that the High Court committed an error in entertaining the writ petition.

15. Apart from delay and laches, High Court should have noted that Insolvency and Bankruptcy Code is a complete code in itself, having sufficient checks and balances, remedial avenues and 5 (2020) 8 SCC 531 6 (2021) 7 SCC 209 7 In State Bank of India & Ors. v. Consortium of Mr. Murai Lal Jalan & Ors; 2024 SCC Online SC 3187 pars 151 and 152.

appeals. Adherence of protocols and procedures maintains legal discipline and preserves the balance between the need for order and the quest for justice. The supervisory and judicial review powers vested in High Courts represent critical constitutional safeguards, yet their exercise demands rigorous scrutiny and judicious application. This is certainly not a case for the High Court to interdict CIRP proceedings under the Insolvency and Bankruptcy Code.

16. In view of the above, we allow these appeals and set aside the final judgment and order passed by the High Court in Writ Petition No. 483 of 2023 (GM-RES) dated 22.04.2024. We further direct that the Adjudicating Authority will now commence the proceedings from where it was interdicted by the High Court and complete the same as expeditiously as possible, which is also the spirit of the Code.

17. There shall be no order as to costs.

.....J. [PAMIDIGHANTAM SRI NARASIMHA]J.
[MANOJ MISRA] NEW DELHI;

JANUARY 03, 2025