

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.475 & 476 of 2023
& I.A. No. 1551 of 2023**

IN THE MATTER OF:

Nippon Life India Asset Management Ltd. ...Appellant

Versus

Piramal Capital & Housing Finance Ltd. & Ors. ...Respondents

Present:

For Appellant: Mr. S. Niranjana Reddy, Sr. Advocate with Mr. Amit Agrawal, Mr. Sumit Agrawal, Ms. Radhika Yadav, Mr. Sahil and Ms. Reena Mehta, Advocates.

For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Ms. Chitra Rentala, Mr. Rajat Jariwal, Ms. Shatakshi Tripathi and Mr. Aditya Dhupar, Advocates for R-1.

With

Company Appeal (AT) (Insolvency) No.488 of 2023

IN THE MATTER OF:

Barclays Bank PLC, Mumbai Bench ...Appellant

Versus

Piramal Capital & Housing Finance Ltd. ...Respondents

Present:

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Ms. Smriti Jha, Ms. Palak Nandani and Ms. Varsha, Advocates.

For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Ms. Chitra Rentala, Mr. Rajat Jariwal, Ms. Shatakshi Tripathi and Mr. Aditya Dhupar, Advocates for R-1.

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ORDER

20.07.2023: These two Appeals have been filed against the order dated 09.02.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court II by which applications filed by Successful Resolution Applicant to substitute itself in the place of Administrator who had filed application under Section 43, 44 and 66 of the Code has been allowed.

2. In Company Appeal (AT) (Ins.) No. 475-476 of 2023, learned senior counsel Shri S. Niranjan Reddy submits that the facts in the case giving rise to this Appeal are little different since in the facts of present case the applications which were filed against the Appellant under Section 43 and 44 were filed subsequent to approval of Resolution Plan by the CoC. Hence, the substitution ought not to have been allowed. It is further submitted that the Appellant is an entity against whom allegation of preferential transactions were made on the ground that Appellant accepted accelerated payments from the Corporate Debtor, which amount relates to corpus of the Appellant received from various investors. It is submitted that in the facts of the present case assignment of the applications under Section 43 and 44 ought not to have been made in favour of the SRA and the application for substitution ought to have been rejected. It is additionally submitted by Mr. Reddy that terms of Resolution Plan did not provide for prosecuting the application filed by the SRA. Another limb of submission of Mr. Reddy is that assignment is not possible in the present case since consideration required is an objective consideration, which can only be done by an Administrator.

3. In Company Appeal (AT) (Ins.) No. 488 of 2023, Shri Krishnendu Datta, learned senior counsel appearing for the Appellant submits that the application which was filed under Section 43, 44 against the Appellant were subsequent to the approval of Resolution Plan by the CoC. Shri Datta further submitted that Appellant is not able to file claim since copy of plan was never provided to the Appellant. It is further submitted that the Appellant has right to set off against Corporate Debtor as per the agreement with the Appellant.

4. Shri Arun Kathpalia, learned senior counsel appearing for the Respondent refuting the submissions of both learned counsel for the Appellant submits that the issues which have been sought to be raised are fully covered by judgment of this Appellate Tribunal dated 15.05.2023 in ***Company Appeal (AT) (Ins.) No. 437 of 2023, Kapil Wadhawan vs. Piramal Capital & Housing Finance Ltd. & Ors.***, where Appeals were filed against same order dated 09.02.2023 and the question answered by this Appellate Tribunal is that provision of the plan authorize/ empowers the Successful Resolution Applicant to prosecute the preferential transactions under Section 43, 44 are valid and substitution of the Successful Resolution Applicant in place of the Administrator was well within the provisions of I&B Code and Regulations. It is also submitted that the judgment also considered the submission that application filed subsequent to approval of Resolution Plan can very well be prosecuted by Successful Resolution Applicant.

5. We have considered the submissions made by learned counsel for the parties and perused the record.

6. In both these Appeals, the fact is that the application under Section 43 and 44 were filed against the Appellant subsequent to approval of the Resolution Plan which fact is not disputed. In the judgment dated 15.05.2023 in '**Kapil Wadhawan vs. Piramal Capital & Housing Finance Ltd. & Ors.**' (*supra*), the question as to whether with regard to applications filed subsequent to approval of the plan by the Successful Resolution Applicant can be prosecuted, was considered and answered in Para 23 and 24. The said submissions have been considered and answered in following manner:

“23. Another argument advanced by the learned Counsel for the Appellant is that two applications filed by the Administrator were after Resolution Plan was voted on 15.01.2021. The learned Counsel for the Appellant has referred to two IAs, which are subject matter of Company Appeal (AT) (Insolvency) Nos.451 of 2023 and 439 of 2023, which according to the Appellant were not even filed till the date Resolution Plan was voted, i.e. 15.01.2021. The submission of the learned Counsel for the Appellant is that any avoidance application, which has been filed subsequent to approval of the Plan cannot be pursued and the order of the Adjudicating Authority substituting the Piramal in those application deserves to be set aside.

24. The timeline for filing avoidance application under Regulation 35A have been held to be not mandatory, however, the applications have to be filed in a reasonable time and any avoidance application, which is filed with inordinate delay can be refused to be entertained by the Adjudicating Authority. The submission which has been pressed by the learned Counsel for the Appellant is that avoidance applications, which were filed after approval of the Resolution Plan by the CoC, could not have been entertained. In the Code and the Regulations, there are no such provisions, which indicate that avoidance application filed after approval of the Plan by the CoC is to be rejected or not. It depends on the facts of each case and circumstances as to whether any application filed after approval of the Resolution Plan by the CoC can be considered or not. In the present case, we noticed that Resolution Plan has noted the pending avoidance applications.”

7. We, thus, are of the view that with regard to application filed subsequent to approval of plan by the CoC substitution of Successful Resolution Applicant in place of the Administrator was approved by NCLT which was also upheld by this Appellate Tribunal. We are bound by the order earlier passed by this Tribunal which have to be followed. In this case, the submission of learned counsel for the Appellant is that the transaction which have assailed against Appellant are on different footing and not impugned under Section 66, hence,

they were required to be objectively considered by the Adjudicating Authority and it was only Administrator who could have objectively prosecuted.

8. We are of the view that substitution of Successful Resolution Applicant in place of the Administrator having been upheld by our earlier judgment, we cannot find any fault with the impugned order. We, however, make it clear that it is open for the Appellant, at the time of consideration of their preferential application on merits, to raise all pleas as available to oppose the transaction which has been impugned in the preferential application. We make it clear that we have not expressed any opinion on the merits of preferential applications and other applications while deciding the present Appeals. Both the Appeals are disposed of accordingly.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

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