

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 827 of 2024

&

I.A. No. 2994 of 2024

IN THE MATTER OF:

Worldfa Exports Pvt. Ltd.

(Successful Resolution Applicant)

Through its Authorized Representative Sahil Gupta

...Appellant

Versus

Vivek Raheja & Anr.

...Respondents

Present:

For Appellant : Nilesh Sharma, Mr. Hewaat Sharma, Ms. Divya Jagga and Mr. Adyasha Nanda, Advocates.

For Respondents : None.

O R D E R
(Hybrid Mode)

30.04.2024: Heard Counsel for the Appellant.

2. This Appeal has been filed against the order dated 09.02.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – VI), by which order Adjudicating Authority has approved the Resolution Plan which was submitted by the Appellant.

3. The Adjudicating Authority has approved the Plan. Learned Counsel for the Appellant is aggrieved with the order wherein reliefs, concessions and waivers sought by the Successful Resolution Applicant (SRA) has not been granted. He has referred to Paragraphs 10 (vi) & 16 of the impugned order which are as follows:

“10. Some key features of the Resolution Plan are as follows:

vi. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration of the decision of the Hon’ble Supreme

Court in the matter of Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ Authority in order to avail the relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm

of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

“16. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon’ble Supreme Court in Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).”

4. Learned Counsel for the Appellant submits that all past liabilities stand waived in view of the approved Resolution Plan and the Adjudicating Authority ought to have specifically granted the said waiver in the impugned order.

5. Adjudicating Authority has already referred to the Judgment of the Hon’ble Supreme Court in the matter of **‘Ghanshyam Mishra & Sons Private Limited’ Vs. ‘Edelweiss Asset Reconstruction Company Limited’**, in **Civil Appeal No. 8129 of 2019**, which clearly laid down that all claims which have not been dealt in the Resolution Plan does not survive after the approval of Resolution Plan.

6. Insofar as statutory waivers and concessions, Adjudicating Authority has rightly observed that SRA to file appropriate necessary application before the necessary Forum/Authority in order to avail the relief and the concession.

7. The Resolution Plan having been approved it is always open for the Applicant to make appropriate application before the Statutory Authority for grant of such relief as permissible after approval of the Resolution Plan.

8. It goes without saying that all past liabilities which are not dealt with in the Resolution Plan stands extinguished by view of the Judgment of the Hon'ble Supreme Court in '**Ghanshyam Mishra & Sons Private Limited**' (**Supra**) which is a well settled law.

9. We thus do not find any reason to entertain the Appeal.

With these observations, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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