

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No.691/2024

in

Company Appeal (AT) (CH) (Ins) No. 127/2024

(IA Nos. 341, 342, 449 & 672/2024)

[Appeal preferred under section 61(3) of the Insolvency and Bankruptcy Code, 2016 against the Impugned Order dated 20th March, 2024 passed by the Adjudicating Authority National Company Law Tribunal, Chennai Bench in M.A No. 37 of 2021 IN C.P(IB) No.1006/IB/2018]

In the matter of:

M/S. ROCKSAND MINERALS PRIVATE LIMITED

Represented by its Director

Having its registered office at

**203. Vijaya Enclave, Plot No, 32,
Srinagar Colony, Hyderabad 500073.**

... Appellant

V

1. J. Karthiga

Resolution Professional of

G.K. Steel and Allied Industries Limited

No, 1077, Avinashi Road,

Coimbatore- 64101.

**..... RESPONDENT NO. 1/
RESOLUTION PROFESSIONAL**

2. State Bank of India

Represented by its Chief Manager,

Stressed Assets Management Branch,

Raja Plaza, First Floor,

No. 1112, Avinashi Road, Coimbatore- 641037. RESPONDENT NO. 2/

FINANCIAL CREDITOR

3. IFCI Limited

Represented by its DGM,

IFCI Tower, 61, Nehru Place,

New Delhi 110019.

**..... RESPONDENT NO. 3/
FINANCIAL CREDITOR**

**4. International Asset Reconstruction
Company Private Limited
Door No. 1, 9th Floor,
“Prashanth Real Gold Tower” D. No. 39,
North Usman Road, T. Nagar,
Chennai- 600 017.**

**..... RESPONDENT NO. 4/
FINANCIAL CREDITOR**

Present :

For Appellant : Ms. Nishitha, Advocate
Mr. Adharsh S & Mr. Jerin Asher Sojan, Advocates

For Respondents : Mr. V.V. Sivakumar, Advocate for RP
Mr. ML Ganesh, Advocate-R2
Mr. Ravi Rajagopalan, Advocate for R4

**ORDER
(Hybrid Mode)**

24.07.2024:

The Appellant herein is a Successful Resolution Applicant. In the Company Appeal (AT) (CH) (Ins) No. 127/2024, he has put a challenge to the order dated 20th March 2024, as it was passed by the National Company Law Tribunal, Chennai Bench in M.A. No.37/2021 which was preferred in C.P.(IB)No.1006/IB/2018. By virtue of the Impugned Order in question, the Resolution Plan has been directed to be enforced subject to the conditions, as it has been given in the operative portion of the Judgment under challenge.

Today the matter was listed on IA No.691/2024 preferred by the Appellant praying for an early hearing of the matter. During the course of argument, the Learned Counsel for the respondent pointed out that the relief being sought by the appellant for the purposes of lifting the attachment which is in fact, creating an embargo in implementation and enforcement of the Resolution Plan already stands

granted by the Learned Adjudicating Authority in its Judgment, the relevant Part of which is extracted hereunder:

“From and on the Plan Approval Date, all assets of the Corporate Debtor (including freehold properties, leasehold interests, or rights of the Corporate Debtor under leave and license agreements executed by it prior to the Plan Approval Date) shall be vested in the Resolution Applicant, free and clear of all Encumbrances, other than Encumbrances required to be assigned”

In further elaboration of his argument in support of the provisions made in Clause I of the Judgment of Learned Adjudicating Authority, he submits that for the purposes of enforcement of the Resolution Plan, in fact, the remedy which lies with the Appellant would be to invoke sub clause 8 of Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process of Corporate Persons) Regulations, 2016 (hereinafter mentioned as Regulations of 2016) Sub Clause 8 of Clause 39 the said Regulations provides that a successful resolution applicant for the purpose of enforcement of resolution plan has to move an application before the Learned Adjudicating Authority, which goes in league with the observations made in the Impugned Judgment under Clause (i) as extracted above. The relevant Sub Regulation 8 of Regulation 39 is extracted hereunder:

“Regulation 39 – Approval of Resolution Plan:

(8) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.”

On the simpliciter reading of Sub Regulation 8 of Regulation 39, it provides that after approval of the Resolution Plan, the Successful Resolution Applicant has to make an application to the Adjudicating Authority for the purposes of seeking assistance for enforcement and implementation of the Resolution Plan. In a nutshell, he submits that the instant IA does not hold ground for the reason being that the relief sought in the instant Appeal as prayed in the IA No.691/2024, itself, has been statutorily protected by sub-regulation 8 of Regulation 39 of Regulations of 2016, as well as the adjudication which has been made by the Learned Adjudicating Authority by the Impugned Judgment under challenge i.e. dated 20th March 2024.

To the aforesaid contention as raised by the Counsel for the Respondent, the Learned Counsel for the Appellant submits that she may be granted liberty to invoke provisions of Sub Regulation 8 of Regulation 39 of Regulations of 2016 to be read with Clause (i) of the Judgment and to resort to remedies in the light of Clause (i) of Para XV of Impugned Judgment which contemplates that, in order to meet out any encumbrances, if any, on the assets of the Corporate Debtor and any other impediments, which may be faced by the Successful Resolution Applicant, he will have to seek the appropriate remedies by filing an application before the learned Adjudicating Authority.

Owing to the aforesaid legal propositions as well as the directions contained in the Impugned Order, the instant Appeal would stand disposed off leaving it open for the Appellant to file an appropriate application falling within the domain of Sub Regulation 8 of Regulation 39 of Regulations of 2016 to be read with sub Clause (i) of XV of the Impugned Judgment of 20th March 2024, and if the Appellant does so, the Application thus to be preferred by the Appellant for the purposes of lifting the embargoes for enforcement of the Resolution Plan, by lifting attachment, the same would be adjudicated upon by the Learned Adjudicating Authority, in accordance with law. It is agreed by the Counsel for the Parties in Appeal that the Appeal itself can be disposed off, subject to the aforesaid liberty being granted to the Appellant. Owing to the aforesaid reasons, since the Appeal is only the enforcement of the

approved resolution plan, which has been sought by the appellant for that, he will have to abide by Sub Regulation 8 of Regulation 39 of Regulations of 2016 and if the appellant does so, it may be proceeded to be decided in accordance with law. Subject to the above, the Company Appeal stands disposed off.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SE/TM