

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No. 2830-2831/2020 & IA No. 3019-3020/2020

TA (AT) No.254 & 255 / 2021

(Company Appeal (AT) (Ins) Nos.1048 & 1049/2020)

IA No. 2826-2827/2020 & IA No.2828-2829/2020

In the matter of:

Hero Exports

Represented by its Constituted Attorney

Having its office at 50, Okhla Industrial Estate, Phase-III, New

Delhi- 110 020

... Appellant

V

1. Mr. K. Vasudevan (CIRP)

Resolution Professional,

Tiffins Barytes Asbestos & Paints Ltd.,

17B/7B, Maruthi Nagar, Hasthinapuram, Chrompet

Chennai- 600 064.

...1st Respondent

2. M/s Tiffins Barytes Asbestos & Paints Ltd.,

Old No. 9, New No. 28, Balaji Avenue,

1st street,

T. Nagar, Chennai-600017.

...2nd Respondent

Present :

For Appellant : Ms. KH. Dhanya Dheekshitha, Advocate

For Respondents : Mr. Om Prakash, Senior Advocate for R3

ORDER
(Hybrid Mode)

03.10.2024:

The Appellant in the instant company appeal has put a challenge to the Impugned Order dated 12.06.2019, & 04.11.2019, as it has been passed in CP(39/IB/2018) by NCLT, Chennai, by virtue of which and as a consequence thereto the resolution plan, submitted before it for approval was affirmed and

stood approved in favour of Respondent No.3, and the challenge to it by way of objection was rejected. What is peculiar in this case is that after the approval of plan in favour of Respondent No.3, by an order of 12.06.2019, the appellant sought a recall of the said order by filing of an application before the Learned Adjudicating Authority, which was more in the form of a review which too stood rejected by an order of 04.11.2019.

Being aggrieved against the orders of NCLT dated 04.11.2019, the appellant has preferred the respective Revision petitions in the CRP No. 499/2020 & CRP No. 2663/2020 M/s Hero Exports Vs. K Vasudevan & Ors. before Hon'ble High Court of Judicature of Madras. The Hon'ble High Court of Madras decided the above two CRPS by the judgment of 11.02.2020, and dismissed the CRPs on the ground, that no direction as such could be given to the NCLT Chennai bench in exercise of its inherent powers.

Since the High Court of Judicature at Madras, had rejected the Revision Petition affirming the rejection of the Recall Application, on its own merit, in that eventuality the consequential effect of rejection of the Revision Petition as against the order of 04.11.2019, would affirm the Judgment of 12.06.2019 of NCLT.

It will be relevant to mention at this juncture is that, when the appellant had invoked the jurisdiction of the High Court under Article 227 of the Constitution of India, the challenge was exclusively confined to be given only

to the order of 04.11.2019. However, no challenge was given to the principal order of 12.06.2019, by virtue of which the Resolution Plan stood approved in favour of Respondent No.3.

It is to be borne in mind that, when under the statute, the power of review or recall is not vested with an authority created under law, the same would not be maintainable and in these eventualities the recall or a review petition cannot be treated as to be a proceeding in continuation to the principal proceeding, which was held before the NCLT, for grant of approval to the Resolution Plan. In that eventuality, where the appellant has opted to put a challenge only to the order of rejection of recall application dated 04.11.2019, it would amount to that he has acceded to the order of approval of the resolution plan dated 12.06.2019, and consequentially the implications of Order II Rule 2, of CPC would follow which is otherwise principally made applicable in the proceedings which are held before the NCLT or under the I & B Code.

Because at the relevant point of time when the appellant has approached the High Court of Judicature at Madras on 22.01.2020, he had a remedy available as against both the orders, but he has opted to challenge only the order of 04.11.2019 rejecting the recall. Thus, in fact, even under the principle of merger it is not available to the appellant as a consequence of the legal implications flowing from the order 04.11.2019.

The appellant attempts to argue the Delay Condonation Application from the perspective that she would be entitled to get the benefit of Section 14, of the Limitation Act, owing to fact, that the High Court has decided CRP only on 11.02.2020, The provisions contained under Section 14 of the Limitation Act will not be a recourse available to the appellant, owing to the fact that Section 61 of I & B code, since being a self-contained provision dealing with the principles of Limitation prescribes within which an Appeal has to be filed for an upper limit and that cannot be made extendable under any circumstances even by this Appellate Tribunal too litigation before Hon'ble Court against rejection of a recall application which itself cannot be taken as a continuation of proceedings of the Principal proceedings can be accepted as a bonafide litigious activity. In that eventuality, the provisions of Section 14, of the limitation Act, will not be attracted for the purposes of condoning the delay chanced in filing the instant Company Appeal, as against the impugned order of 12.06.2019, affirming the resolution plan in favour of Respondent No.3. Besides this, the Learned Counsel for the Appellant has argued in favour of the delay condonation application from yet another perspective that, she would be eligible for exclusion of time as laid down by the Judgment of the Hon'ble Apex Court Judgment, as rendered in Suo Moto Writ Petition No.3/2020, where the limitation period stood extended with the effect from 15.03.2020, as a consequence of the Covid 19 situation. This plea is also not tenable for the reason being that, the resolution plan stood approved on 12.06.2019, the recall

application was dismissed on 14.11.2019, she approached before the Hon'ble High Court on 22.01.2020, and even the date of dismissal of the CRP happen to be 11.02.2020, and all these dates are much prior to the cut-off date (15.03.2020) provided by the Hon'ble Apex Court Judgement in Suo Moto Writ Petition No.3/2020, it is held that the determination of limitation in the instant case would exclusively be taken from 12.06.2019 and not from the date when the CRP was dismissed by the High Court of Judicature at Madras, that is, 11.02.2020.

In these eventualities, that since the period of limitation has to be computed as per the provisions contained under Section 61 and since, the Company Appeal itself was preferred before this Tribunal only on 07.11.2021, the said appeal is exclusively barred by limitation and outside the upper period of limitation prescribed under Section 61, of I & B Code. Thus, the appeal would stand dismissed as it is barred by limitation as prescribed under Section 61 of I & B Code.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

GL/TM/MS