

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.337 / 2022
(IA Nos. 758, 759, 990 & 907/2022)

In the matter of:

- (1) M.K. Resely
S/o. M.S. Kochuthampi,
Murickolil House, Nadackal P.O.,
Erattupetta Village, Kottayam District,
KERALA, PIN - 686124

- (2) M.K. Faisal
S/o. M.S. Kochuthampi,
Murikolil House, Nadakal (P.O.)
Erattupetta Village, Kottayam District,
KERALA, PIN – 686124

- (3) M.K. Anas
S/o. M.S. Kochuthampi,
Murikolil House, Nadakal (P.O.)
Erattupetta Village, Kottayam District,
KERALA, PIN – 686124

- (4) Ancy Mol
Murikolil House, Nadakal (P.O.)
Erattupetta Village, Kottayam District,
KERALA, PIN – 686124

- (5) S. Amina
Murickolil House, Nadackal (P.O.)
Erattupetta Village, Kottayam District,
KERALA, PIN – 686124

- (6) Dr. Mohammed Ismail
S/o. M.K. Mohmammed Ali,
Madavana, Pathaikkara,
Perinthalmanna, Malapuram District,
KERALA – 679322

(7) M.K. Nabeel
Murikkolil House, Nadackal P.O.
Erattupetta Village, Kottayam
KERALA, PIN – 686124

(8) Shaila Ismail
Madavana House,
Pathiakkara P.O., Perinthalmanna,
Malappuram, KERALA – 679322

... Appellants

V

(1) Union Bank of India,
Erattupetta Branch,
1st Floor, Paraanal Arcade,
Aruvithara, SD Meenachil,
Erattupetta P.O.,
Kottayam – 686121

(2) Meenachil East Urban Cooperative Bank Ltd.
No. 4266, Poonjar, Poonjar Thekkekara PO
Kottayam District – 686582,
Represented by its Chief Manager.

(3) C.A. Mahalingam Suresh Kumar,
Liquidator of M/s. Raihan Healthcare Pvt. Ltd.
M/s. SPP & Co. Chartered Accountants,
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puiyakulam, Coimbatore – 641045

... Respondents

Present :

For Appellants : Mr. S. Eswaran & Mr. Jerin Asher Sojan,
Advocates

For Respondents : Mr. Varun Srinivasan, Advocate for R1
Ms. Swetha Elizabeth Sabor, Advocate
For Mr. Shinu J. Pillai, Advocate for R2
Mr. AG. Sathyanarayana, Advocate for R3

ORDER
(Hybrid Mode)

09.07.2024:

1. On 14.07.2022, this Company Appeal (AT) (CH) (INS) No. 337 / 2022, M.K. Resely & 7 Ors. V. Union Bank of India was instituted before this Tribunal, putting a challenge to the Impugned Judgment of the NCLT, Kochi Bench on 21.01.2022 in MA / 76 / KOB / 2020 in IBA / 240 / KOB / 2019 by which the Respondent No. 3 / Liquidator was allowed to include certain lands owned by the Appellants and given on Lease to the Corporate Debtor under Liquidation in the 'Liquidation Estate'.
2. The Company Appeal as above was accompanied by a Condone Delay Application being IA No. 990 / 2022. While allowing IA No. 990 / 2022, this Tribunal rejected the Company Appeal on 24.11.2022, on grounds of being filed beyond the 'prescribed time limit', as granted by the Hon'ble High Court of Kerala.
3. Subsequently, the Appellants had gone an Appeal to Hon'ble Apex Court against this decision in Civil Appeal No. 8981 / 2022 and Hon'ble Apex Court allowed the Appeal on 07.08.2023 observing that having allowed exclusion of 147 days by applying 'Bona Fide Litigious Activity' principle, NCLAT has erred in not allowing the delay of 1 day which should have been condoned and directed that the Appeal would be heard on merits by NCLAT.

4. When the matter was taken up today, the Learned Counsel for the Respondent had pointed out that by the Order of 21.01.2022 which is under challenge, three IAs were decided by NCLT, the IAs being MA / 76 / KOB / 2020, Ivn. P / 07 / 2021 and Ivn. P / 08 / 2021 and learned NCLT allowed MA No. 76 / KOB / 2020, while disposing of Ivn. P / 07 / 2021 and Ivn. P / 08 / 2021, by stating that *“since we have heard the arguments of the Respondents No. 3 to 8 and decided the issue in MA / 76 / KOB / 2020, the question of intervention in IBA / 240 / 2019 and grant the other reliefs sought for do not arise in this matter”*.

5. It is seen that the Appellants have chosen to challenge the decision rendered in MA / 76 / KOB / 2020 only and not the decisions in Ivn. P / 07 / 2021 and Ivn. P / 08 / 2021. In fact, the specific relief as prayed for by the Appellants in the instant Appeal is extracted hereunder:

“Set aside the Impugned Order dated 22.1.2022, passed by the Ld. Adjudicating Authority, Kochi in MA 76 of 2020 in IBA/240/2019 (CB) and allow the above Appeal, filed by the Appellants”

6. What is reflected from the Impugned Order dated 21.01.2022 is that, the learned Tribunal, had heard the Appellants during the proceedings of MA / 76 / KOB / 2020 and rejected the respective Interlocutory Applications / Intervention Petitions which they have preferred for being permitted to be heard and for grant of other reliefs, before the NCLT.

7. The argument which the Learned Counsel for the Appellant makes to sustain this Appeal is that, since he was heard by the Tribunal, though not being a party to the proceedings, he consequentially gets a right to prefer an Appeal on an Aggrieved Person in light of the provisions contained under Section 61 of the I & B Code, 2016, concerning an ``Aggrieved Person``.

8. We are of the view that the ``Aggrieved Person`` in the context of the terminology used under Section 61 (1), would be `a person who has not been conscious of an Impugned Order that prejudices his material right and such person could still invoke an Appellate Jurisdiction by seeking the leave of the Court. However, the interpretation of the word `Aggrieved Person`, could not be stretched to an extent, to accommodate a person who was conscious of his rights and has intervened in the proceedings, but whose intervention was ultimately rejected, because, for all practical purposes, such a person cannot be treated as to be a party to the proceedings based on which, he could have preferred an Appeal, Merely based on the fact that he was heard, his Appeal would not be sustainable, as long as he has not been included as a party to the proceedings.

9. Even otherwise also, the Learned Adjudicating Authority was quite conscious of this distinction and hence had described the present Appellants as to be the additional Respondent Nos. 3 to 8, based on the request of the Liquidator / Respondent No. 3 in this Appeal in the proceedings of MA / 76 / KOB / 2020

while the respective Interlocutory Applications preferred by them stood dismissed, by the Common Order dated 21.01.2022.

10. It is clear from a reading of the relief clause of Appeal as extracted above, the Appellants before this Tribunal have only put a challenge to the Order passed on MA / 76 / KOB / 2020. They have not put a challenge to the Orders, passed on the Applications preferred by them to permit them to intervene. However, merely because of the fact that they were heard or they were described as Additional Respondents, before the NCLT, they will not get the status of being a party to the proceedings which will enable them to file an Appeal. Further, they would not be entitled to be treated as to be an ``Aggrieved Person'', because, they were conscious of the proceedings, being held, before the NCLT.

11. What is more agonising for us is that, the Appellants have preferred this Appeal, before this Tribunal on 14.07.2022 and during the course of the proceedings of the Appeal, before this Tribunal, they have not disclosed the fact that after preferring of an Appeal on 14.07.2022, they have simultaneously filed a Writ Petition being Writ Petition No. 13443 / 2024, filed before the Hon'ble High Court of Kerala on 31.03.2024, for the purposes of seeking an Interim Order.

12. With all due and humility at our command, we are of the view that since the Appellants have invoked Appellate Jurisdiction under Section 61 of the I & B Code, 2016, as against the Impugned Order of 21.01.2022, rendered by the NCLT on MA / 76 / KOB / 2020, without giving a challenge to the Orders passed on the IAs, rejecting their intervention, the Appeal at their behest would not be maintainable. Further, we wish to reiterate that the Tribunals or any Court for that purpose is not meant for the persons who do not approach the Tribunal / Court with the clean hands. Concealment of a fact or distortion of a fact would be a sufficient ground to decline the interference, while exercising the Appellate Jurisdiction under Section 61 of the I & B Code, 2016. Once the Appellants have simultaneously resorted to two recourses, by way of the instant Company Appeal and simultaneously by filing a Writ Petition, being Writ Petition No. 13443 / 2024, it is crystal clear that they have not come up with clean hands, before this Tribunal and that in itself would be a sufficient ground for rejection of this Appeal, apart from the fact that they have not put a challenge to the rejection of their Intervention Petitions.

13. It will be interesting to note that prior to this Writ Petition, the Appellants has filed a Writ Petition No. 30146 / 2023, which they later on got dismissed as being granted as infructuous and after the dismissal of the Writ Petition as being rendered infructuous, they have filed another Writ Petition No. 13443 / 2024.

Owing to the above grounds, we are not inclined to interfere in the Appeal and the same is accordingly dismissed. The connected pending Interlocutory Applications, if any, are closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SR/TM