

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.106/2024
(IA No.290/2024) (IA No.291/2024) (IA No.292/2024)

(Arising out of the Impugned Order dated 09.02.2024 passed by the
'Adjudicating Authority'/ National Company Law Tribunal, Division Bench-
1, Chennai in IA No.1800/2023 in IA(IBC)/1425/2022 in CP/216/2019)

In the matter of:

Ansio Industries Pvt Ltd
Represented by its Director
17/1/1, Srirengapalayam,
Rajapalayam
Virudhnagar- 626117

...Appellant/Successful resolution Applicant

VS

1. M/s Venkat Ram Spinners Private Limited
Through its Liquidator
109/1, Koonakulam Road,
Cholapuram, District-
Virudhunagar-626139

.....Respondent No. 1/Corporate Debtor

2. CA Mahalingam Suresh Kumar
Liquidator, M/s Venkat Ram
Spinners Private Limited
No. 27/9, Nivedh Vikas,
Pankaja Mill Road Puliyakulam,
Coimbatore-641045

...Respondent No. 2/Liquidator

3. State Bank of India
Stressed Asset Management Branch
Coimbatore 1112,
Raja Plaza, First Floor,
Coimbatore-641037 Email

**...Respondent No. 3/
Financial Creditor**

4. Bank of Baroda
Stressed Asset Management Branch
No. 45, Moore Street,
JBAS Building, 4th Floor,
Chennai- 600001

...Respondent No. 4/Financial Creditor

Present :

For Appellant : Mr. Kumar Anurag Singh Advocate
Ms. Ekta Bharati, Advocate

For Respondent : Mr. TK Bhaskar, Advocate
For Mr. AG Sathyanarayana Advocate for Liquidator/R1

ORDER
(Hybrid Mode)

21.03.2024:

After ‘Hearing’ the arguments of Learned Counsel Mr. Kumar Anurag Singh appearing for the ‘Appellant’, and also Mr. TK Bhaskar, Learned Counsel appearing for the ‘1st Respondent/Liquidator’, it transpires that the instant ‘Appeal’ (AT)(CH)(Ins) No.106 of 2024 is filed against the ‘Impugned Order’ dated 09.02.2024, in IA No.1800/2023 in IA(IBC)/1425/2022 in CP/216/2019 passed by the ‘Adjudicating Authority’/ National Company Law Tribunal, Division Bench-1, Chennai.

It comes to be known that in IA No.1800/2023 in IA(IBC)/1425/2022 in CP/216/2019 relief sought for by the ‘Appellant/Petitioner’ is to grant ‘Interim Stay’ of the ‘Sale Notice’ dated 16.09.2023 issued by the 2nd Respondent therein, that the ‘Sole Assets’ of the ‘Corporate Debtor’ and the property of one Mr. S. Srinivasan and to ‘quash’ and set aside the ‘Sale Notice’ dated 16.09.2023 issued by the 2nd Respondent for the sale of assets of the ‘Corporate Debtor’ and the property of one Mr. S. Srinivasan (‘Guarantor’).

There is no two opinion of an important fact, that the IA No.1800/2023, in IA(IBC)/1425/2022 in CP/216/2019 (Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016) by the ‘Appellant’/Petitioner/Successful Resolution Applicant’, came to be dismissed, by the ‘Adjudicating Authority’/‘Tribunal’ by assigning tangible and substantial reasons, among other things by pointing out, that the ‘Corporate Debtor’ owning the ‘Building and the Land’ (viz. ‘Guarantor’ – Mr. S. Srinivasan) had mortgaged the properties, in favour of the 4th Respondent/Bank of Baroda a ‘Secured Financial Creditor’. Added further, the ‘E-auction Notice dated 16.09.2023’, clearly states that some properties of the ‘Guarantor’ are also jointly brought to ‘sale’ of the ‘Secured Creditors’. For arriving at the conclusion in not allowing the ‘reliefs’, sought for, by the ‘Appellant/Petitioner/Successful Resolution Applicant’, the ‘Adjudicating Authority/Tribunal’, had adverted to the decision of the ‘Appellate Tribunal’ in Ayan Mallick Vs Pratim Bayal, Liquidator & Ors (vide Comp. App. (AT)(INS) No. 456 of 2022) vide whereby and whereunder, the ‘Appellate Tribunal’, had also allowed the ‘Joint Sale of Properties of the ‘Corporate Debtor’, ‘Guarantors’, etc.

At this juncture, suffice it for this ‘Tribunal’, to pertinently point out that the ‘Adjudicating Authority/Tribunal’ had found no merit in the ‘Application’, and ‘dismissed’ the said ‘interlocutory Application’.

Mr. T.K. Bhaskar, the Learned Counsel appearing for the ‘1st Respondent/Liquidator’, while taking this ‘Appellate Tribunal’, to the ‘Impugned Order’ passed by the ‘Adjudicating Authority/Tribunal’ dated 09.02.2024, in IA No.1800/2023 in IA(IBC)/1425/2022 in CP/216/2019 passed by the ‘Adjudicating Authority’/ National Company Law Tribunal, Division Bench-1, Chennai, has brought to the notice of this ‘Tribunal’, that a ‘Sale Notice’ (‘E-auction Sale of Assets’ under ‘Insolvency and Bankruptcy Code, 2016 and SARFAESI Act, 2002’, took place, on 20.03.2024 at 09.30 a.m. to 05.00 p.m., in respect of properties of

‘Six Lots’ (Lot 1 to lot 6) and on 20th March 2024, the ‘Lot No.4 and 5 properties’, were sold to the ‘Highest Bidder’ and ‘Sale’, was confirmed, in respect of the Highest Bidder’, which fact is not in ‘dispute’.

When subsequent development viz. ‘E-auction Notice’ dated 15.02.2024 had come into existence, and because of the said ‘E-auction’ in respect of ‘Lot No.4 and 5 properties’, the ‘Higher Bidders’ became the ‘successful parties’, and ‘their Bids’, even confirmed, then, the ‘Appellant/Petitioner’ in ‘law’, is only to assail the ‘E-auction Notice’ dated 15.02.2024, if it so desires/advised.

On a ‘query’ posed by this ‘Tribunal’, the Learned Counsel for the ‘Appellant’, informs this ‘Tribunal’, that he maintains that the instant ‘Appeal’ viz. Comp. App. (AT)(CH)(Ins) No.106 of 2024, challenges the ‘Impugned Order’ dated 09.02.2024 in IA No.1800/2023 in IA(IBC)/1425/2022 in CP/216/2019) on the file of the ‘Adjudicating Authority’/‘Tribunal’ and in any event, the terms and conditions of the ‘E-auction Notice’ dated 15.02.2024 are one and the same of the earlier ‘Auction Notice’ dated 16.09.2023.

In this connection, this ‘Tribunal’, pertinently points out, that obviously, the Learned Counsel for the ‘Appellant/Petitioner’, is not desirous of assailing the ‘subsequent E-auction Notice’ dated 15.02.2024, (being the later development, after the earlier ‘Auction Notice’ dated 16.09.2023) and in the absence of any challenge to the subsequent ‘E-auction Notice’ dated 15.02.2024, then ‘in law’, it amounts to ‘waiver’, ‘Acquiescence’ and also ‘Estoppel By Conduct’, of the ‘Appellant/Petitioner’.

Viewed in the aforesaid perspective, the instant ‘Comp. Appeal’ (AT)(CH)(Ins) No.106 of 2024, filed by the ‘Appellant’, is only an ‘exercise in futility’/‘otiose one’, in the considered opinion of this ‘Tribunal’. As such, this ‘Tribunal’ is not inclined to entertain the instant ‘Comp. Appeal’ (AT)(CH)(Ins)

No.106/2024 and ‘Dismisses’ the same, at the ‘Admission’ stage, without traversing, or delving deep into the ‘subject matter in issue’. Accordingly, the ‘instant Appeal’ fails.

In fine, the ‘instant Comp. Appeal (AT)(CH)(Ins) No.106/2024 is ‘Dismissed’. No costs. Before parting with the case, this ‘Tribunal’, makes it quite clear, that the ‘Dismissal’ of the instant Comp. App. (AT)(CH)(Ins) 106/2024 will not preclude the ‘Appellant’, to seek redressal of its grievances before the ‘Competent Forum’, of course, ‘in accordance with Law’, and ‘in the manner known to Law’, if it so desires/advised. Connected pending IA No.290/2024(for Directions), IA No.291/2024 (for exemption) and IA No.292/2024 (for Stay) are closed.

[Justice M. Venugopal]
Member (Judicial)

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SE/TM