

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2730 OF 2020

VISHAL VIJAY KALANTRI

Appellant

VERSUS

DBM GEOTECHNICS & CONSTRUCTIONS
PVT. LTD. & ANR.

Respondents

O R D E R

This appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 (I.B. code, for short) is directed against the order dated 12.03.2020 passed by the National Company Law Appellate Tribunal, New Delhi (for short "NCLAT") in Company Appeal (AT) (Insolvency) No.139 of 2018.

During the course of its order, the NCLAT observed as under:

"11. The voting on the resolution for approval of Settlement Proposal under Section 12A of the I&B Code proposed at the 'Committee of Creditors' Meeting held on 13th September 2019 was concluded on 17th September, 2019. From the results of the voting, it was noted that the resolution for withdrawal of 'corporate insolvency resolution process' under Section 12A of the I&B Code was rejected by the members of the 'Committee of Creditors' by 99.68%

voting shares and 'Committee of Creditors' members having the remaining 0.3% voting shares abstained from voting. As such, it is unequivocally clear that the resolution for withdrawal of 'corporate insolvency resolution process' under Section 12A of the I&B Code came to be rejected by the members of the 'Committee of Creditors' as the same could not muster the requisite 90% voting share.

12. It is pertinent to mention that the said Resolution Plan of the 'APSEZL' was found to be in compliance with Section 30(2) of the I&B Code and Regulation 38 of the CIRP Regulations. Since, the withdrawal resolution under Section 12A of the I&B Code stood rejected by the members of the 'Committee of Creditors', as per the instructions of the 'Committee of Creditors' in its 22nd Meeting, the Resolution Professional put the Resolution Plan submitted by 'APSEZL' for voting by the members of the 'Committee of Creditors'. The voting on the same commenced on 17th September, 2019 and concluded on 19th September, 2019.

13. On 19th September, 2019, the voting results were received which revealed that the Resolution Plan submitted by APSEZ was approved by the members of the 'Committee of Creditors' with 99.68% votes."

It was also recorded that the Settlement Proposal of the appellant under Section 12A of the I.B. Code was rejected by 99.68% votes of the Committee of Creditors (CoC, for short).

The facts on record indicate that a notice invoking arbitration was issued on 29.07.2016 by respondent no.1 in

relation to Contract No.2 whereafter an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 was filed in the High Court of Bombay on 15.12.2016. A notice was also issued on 23.03.2017 invoking arbitration in relation to Contract No.1. Thereafter, Consent Terms dated 29.03.2017 were entered into, in terms whereof, the Notice dated 23.03.2017 stood withdrawn. It appears that Consent Terms did not fructify and completely failed.

On 16.06.2017 a Notice under Section 8 of the Code was issued. In its response dated 29.06.2017, respondent No.2 submitted *inter alia* that the Terms of Consent were void and unenforceable.

Thereafter, the application under Section 11(6) as aforesaid was withdrawn on 14.09.2017.

The Adjudicating Authority admitted the petition under Section 9 of the I.B. Code vide Order dated 25.03.2018 against which an appeal was preferred. The appeal was dismissed by the NCLAT with above quoted observations.

Mr. P. Chidambaram, learned Senior Advocate for the appellant submitted that the issue which got crystallized in the orders dated 18.04.2018 and 23.05.2018, whereafter the matter was adjourned on 12.07.2018 and 17.10.2019, was not decided by the NCLAT while disposing of the appeal.

Mr. Mukul Rohatgi, learned Senior Advocate for the respondent-original applicant submitted that as against the claims amounting to Rs.30 crores which were subject matter of

the arbitration notice, the claims received by the CoC are to the tune of Rs.3000 crores and the voting pattern referred to in the above quoted paragraphs from the order of NCLAT discloses near unanimity amongst the claimants.

Though the issue as framed in the orders dated 18.04.2018 and 23.05.2018 was not decided by the NCLAT, in our view, in keeping with the law laid down by this Court in *Mobilox Innovations Private Ltd. v. Kirusa Software Private Ltd.*, (2018) 1 SCC 353, a dispute must truly exist in the facts and should not be spurious, hypothetical and illusory.

In the light of the facts adverted to in paragraphs 11 to 13 as quoted above, the NCLAT was right in not considering the issue framed in the Orders dated 18.04.2018 and 23.05.2018

In the circumstances, we see no reason to interfere in the matter. The appeal is, accordingly, dismissed. No costs.

In view of the dismissal of the appeal, no separate orders are called for in I.A. No.62152/2020.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

NEW DELHI;
JULY 20, 2020

ITEM NO.4

COURT NO.5
(HEARING THROUGH VIDEO CONFERENCING)

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.2730/2020

VISHAL VIJAY KALANTRI

Appellant(s)

VERSUS

DBM GEOTECHNICS & CONSTRUCTIONS PVT. LTD. & ANR. Respondent(s)

(FOR ADMISSION; IA No.62053/2020 - FOR EX-PARTE STAY; IA No.62054/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT; and, IA No.62152/2020 - FOR INTERVENTION/IMPLEADMENT)

Date : 20-07-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s) Mr. P Chidambaram, Sr. Adv.
Mr. Darius Khambatta, Sr. Adv.
Mr. Ameet Naik, Adv.
Ms. Neeha Nagpal, Adv.
Ms. Pallavi Langar, Adv.
Mr. Abhishek Kale, Adv.
Ms. Nisha Kaba, Adv.
Mr. Vishvendra Tomar, Adv.
Mr. Malak Manish Bhatt, AOR

For Respondent(s) Mr. Vikram Nankani, Sr. Adv.
(For R-1) Mr. Mahesh Agarwal, Adv.
Mr. E. C. Agrawala, AOR

For R-2 Mr. Mukul Rohatgi, Sr. Adv.
Ms. Radhika Gautam, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Appeal is dismissed, in terms of the Signed Order.

Pending application(s), if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER(PRADEEP KUMAR)
BRANCH OFFICER

(Signed Order is placed on the File)