

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 401/2022
(IA Nos. 960 & 961/2022)
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned Order dated 20/09/2022 in
IA (IBC) No.108/2022 & IA (IBC) No.94/2022 in
TCP (IB) No.105/9/AMR/2019, passed by the ‘Adjudicating
Authority’, National Company Law Tribunal, Amaravati Bench at
Mangalagiri)

In the matter of:

Madhavi Edible Bran Oils Pvt. Ltd. ... Appellant
V
Immaneni Eswara Rao & 5 Ors. ... Respondents

Present :

For Appellant : Mr. Rohan Aloor
For Respondents : Mr. Avinash Krishnan Ravi- R1
Mr. E Om Prakash, Sr. Adv
For Mr. Arjun Suresh- R2

With

Company Appeal (AT) (CH) (Ins) No.388/2022
(IA Nos.924, 925 & 926/2022)
(Under Section 61 of the Insolvency and Bankruptcy Code,
2016)

(Arising out of the Impugned Order dated 20.09.2022 in
IA(IBC) No.94/2022 in TCP(IB) No.105/9/AMR/2019, passed
by the ‘Adjudicating Authority’ (National Company Law
Tribunal, Amaravati Bench)

In the matter of:

Immaneni Eswara Rao Erstwhile RP of
M/s. Segno Ceramics Pvt. Ltd. ... Appellant
V
Narahari Prasad Narasimha Rao
Director (Suspended) & 4 Ors. ... Respondents

Present :

For Appellant : No Appearance
For Respondents : E Om Prakash, Sr Adv for Adv Arjun
Suresh, counsel for Respondent No. 2

ORDER
(Virtual Mode)

17.07.2023: This order shall dispose of two appeals bearing Company Appeal (AT) (CH) (Ins) No. 401/2022- Madhavi Edible Bran Oils Pvt. Ltd. Vs. Immaneni Eswara Rao & 5 Ors. (hereinafter referred to as 1st Appeal) and Company Appeal (AT) (CH) (Ins) No. 388/2022 -Immaneni Eswara Rao Erstwhile RP of M/s. Segno Ceramics Pvt. Ltd. Vs. Narahari Prasad Narasimha Rao Director (Suspended) & 4 Ors. (hereinafter referred to as 2nd Appeal).

2. Both the appeals have arisen from the common order dated 20.09.2022 passed by NCLT Amravati Bench dismissing I.A.(IBC) No. 108/2022 filed by the Successful Resolution Applicant from which Appeal No. 1 has arisen and I.A.(IBC) No. 94/2022 filed by IRP from which Appeal No. 2 has arisen.

3. In brief, M/s Trishla Minerals (Operational Creditor) filed an Application under Section 61 of IBC Code, 2016 against M/s Segno Ceramics Private Limited (Corporate Debtor) which was admitted on 22.09.2019. The Resolution Plan of the S.R.A. (Madhavi Edible Bran Oils Pvt. Ltd.), Applicant in I.A. No. 108/2022, was approved by the Tribunal on 17.03.2021. In both the appeals, Avoidance Application was filed by the

Resolution Professional as well as S.R.A. The issue involved was as to whether the Avoidance Application can be decided, filed after the Resolution Plan is approved. This issue has been decided against the Appellant in both the appeals relying on a Single Bench Judgment of Delhi High Court rendered in *M/s Venus Recruiter Private Limited Vs. Union of India and Ors.* – 2020 SCC Online Del 1479.

4. It is an admitted case of the parties that the decision in the case of *M/s Venus Recruiter Private Limited Vs. Union of India and Ors* was reversed by Division Bench of Delhi High Court in the case – *TATA Steel BSL Ltd. Vs. M/s Venus Recruiter Private Limited Vs. Union of India and Ors.* reported in MANU/DE/0158/2023 and followed in the order passed by this Tribunal in *CA(AT)(Ins) No. 437 of 2023*, titled as *Kapil Wadhawan Vs. Piramal Capital & Housing Finance Ltd. & Ors.* in which it has been held that the application for avoidance is still maintainable de hors the approval of the Resolution Plan.

5. In view of the aforesaid facts and circumstances, once the decision of the learned Single Judge, on the basis of which the impugned order has been passed, has been reversed by the Division Bench of Hon'ble Delhi High Court in the case *TATA Steel BSL Ltd. Vs. M/s Venus Recruiter Private Limited Vs. Union of India and Ors.* (Supra) followed by a decision of this Tribunal in *Kapil Wadhawan Vs. Piramal Capital & Housing Finance*

Ltd. & Ors., the question involved in this is no more *res integra* and decided as such and it is held that the application filed at the instance of the Resolution Professional and Successful Resolution Applicant on the basis of avoidance is maintainable even after the approval of the Resolution Plan.

6. In view of the above, both the appeals are hereby allowed. The impugned order passed in both the appeals are set aside and the matter is remanded back to the learned Tribunal to decide the applications on merits after hearing both the parties in accordance with law by passing a speaking order.

7. At this stage, while parting with this case, we make it clear that we have not observed even a word about merits of the case which shall be decided by the learned Tribunal in regard to both the applications i.e., I.A.(IBC) No. 108/2022 and I.A. (IBC) No. 94/2022. The parties are directed to appear before the learned Tribunal on 01.08.2023.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)