

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1717 of 2023

IN THE MATTER OF:

Telecommunications Consultants India Ltd.

...Appellant

Versus

MBL Infrastructure Ltd.

...Respondent

Present:

For Appellant : Mr. Krishnendu Datta Sr. Advocate with Mr. Nikhilesh Krishnan, Ms. Ritika Priya and Mr. Rajat, Advocates

For Respondent : Mr. Arun Kathpalia, Sr. Advocate, Mr. Rachit Wadhwa, Mr. Aditya Dhupar, Advocates.

O R D E R
(Hybrid Mode)

04.01.2024 Heard Learned Counsel for the parties. This appeal has been filed against the order dated 08.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) in M.A. No. 2 of 2022 in Company Petition No.170 of 2017. The Appellant filed the M.A. where following prayers were made:

- “(a) Either set aside the resolution plan dated 29.06.2017 as approved against applicant/TCIL or it be directed that claim of TCIL arising out NHAI Contract, Package 9 Contract & HSRDC Contract as per Annexures A-8 to A-10, are part of resolution plan as approved.*
- (b) It be declared/held that resolution plan as approved of MBL being ineligible and not maintainable and being hit by Section 29A(h) of IBC Code as held by the Hon’ble Supreme Court in judgment dated 18.01.2022 passed in the said Civil Appeal No. 8411 of 2019, cannot be said to extinguish claims of TCIL or bar initiation or continuance of proceedings in respect to a claim of TCIL, which is not part*

of the resolution plan as per Section 31(1) of IBC / ruling of Ghanshyam Mishra (supra).”

2. The resolution plan in the Corporate Insolvency Resolution Process of the Corporate Debtor was approved by the judgment of Hon’ble Supreme Court of India dated 18.01.2022 in *Civil Appeal No.8411 of 2019 – Bank of Baroda & Anr. Vs. MBL Infrastructures Limited & Ors.* The prayers made in the application for setting aside the plan has rightly been not entertained by the Adjudicating Authority in the M.A.

3. Further, Learned Counsel for the Appellant submits that he does not press for prayer (a) and he only confines the alternative prayer that is only to the extent that the resolution plan as approved by Hon’ble Supreme Court cannot be said to extinguish claims of TCIL or bar initiation or continuance of proceeding in respect to a claim of TCIL which is not part of the resolution plan.

4. Mr. Arun Kathpalia, Learned Senior Counsel appearing on behalf of the Respondent submits that Appellant when the Civil Appeal No.8411 of 2019 were pending had filed I.A. No. 7202 of 2022 making similar allegation and ground and the said application has also been dismissed as withdrawn by order of same date. Supreme Court has passed the following order in I.A. No.7202 of 2022:

“I.A. NO.7202/2022 – FOR INTERVENTION/IMPLEADMENT

The application is dismissed as withdrawn with liberty to pursue such remedy as may be available in law.”

5. It is submitted by the Appellant that Arbitration proceeding at different stages are pending between the parties. The alternate prayer in the application which is now sought to be pressed by the Counsel for the Appellant is to declare that resolution plan does not extinguish the claim of TCIL or bar initiation or continuance cannot be entertained in the M.A. No.2 of 2022 which were filed by the Appellant. What is the consequence or effect of the approval of resolution plan is the question which needs to be examined when such issue arises in appropriate proceedings. It is not required to express any opinion in this appeal which arises out of M.A. No.2 of 2022.

6. We are of the view that Adjudicating Authority did not commit error in rejecting M.A. No. 2 of 2022. Learned Counsel for the Appellant has referred to the liberty granted by the Hon'ble Supreme Court while withdrawing the I.A. filed by the Appellant. That liberty as noticed above was only to take such remedy as may be available in law, which liberty is always available to the Appellant.

7. We dismiss the Appeal subject to observations as made above.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

**[Mr. Arun Baroka]
Member (Technical)**

pks/nn