

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.246/2024
(IA No. 651/2024)

(Arising out of the 'Impugned Order' dated 10.05.2024 in
IA/IBC/1748/2023 in IBA/902/2019, passed by
the 'Adjudicating Authority', (National Company Law Tribunal',
Chennai Bench)

In the matter of:

Mr. C. Sivasami,
Resolution Applicant / Promoter,
M/s. Topknit Processing Mills Pvt. Ltd.,
1/131, Senathipathi Chetty Palayam,
Kalipalayam, Morattupalayam,
Utthukuli RS,
Tirupur – 638 752.

.... Appellant

v.

Mr. A.R. Ramasubramania Raja,
Liquidator of M/s. Topknit Processing
Mills Pvt. Ltd.,
No.3, Sundaram Brothers Layout,
Opp. to All India Radio
Trichy Road, Ramanathapuram,
Coimbatore - 641 045.

... 1st Respondent

M/s. Small Industries Development Bank of India,
Rep. by IRP Mr. K.J. Vinod,
SIDBI Tower, 15, Ashok Marg,
Lucknow – 226 001.

... 2nd Respondent

Present:

For Appellant : Mr.TK Bhaskar, Advocate
For Mr. Sankar Varadharajan, Advocate

For Respondent No.1 : Mr. Sathiyarayanan, Advocate

For Respondent No.2 : Mr. Dhruva, Advocate, For R2

JUDGMENT
(Hybrid Mode)

[Per : Sharad Kumar Sharma, Member (Judicial)]

The Appellant in this Company Appeal is the Successful Resolution Applicant / Promoter of M/s. Topknit Processing Mills Pvt. Ltd., the Corporate Debtor. He raises his grievances as against the Impugned Order of 10.05.2024, as it has been passed by the Learned Adjudicating Authority of Chennai Bench in IA/IBC/1748/2023, as rendered in IBA/902/2019. By virtue of the Impugned Order under challenge, the relief which was sought by the Appellant in form of

- (i) Staying the operation of its order dated 26.07.2023 directing liquidation of the Corporate Debtor and the appointment of the liquidator, in order to enable the Appellant to deposit the balance amount of Rs.9,37,50,000/- into the liquidation account of the Corporate Debtor and
- (ii) Directing the liquidator to put on hold the liquidation proceedings was rejected.

The Appellant contends that the Impugned Order rejecting the aforesaid IA preferred by the Appellant being IA No.1748/2023, seeking stay of the order dated 26.07.2023 and permission to deposit the amount is arbitrary, as no effective opportunity of hearing was provided to him coupled with the fact that the Impugned Order happens to be perverse and without assigning any plausible reasons to rejection of his application and the arguments pressed by him in his

Application IA/IBC/1748/2023, preferred under section 60(5) of I & B Code, 2016.

The case of the Appellant is that he is the Promoter and Successful Resolution Applicant of the Corporate Debtor which was put into CIRP Proceedings by an Order of 21.11.2019 and that the Resolution Plan submitted by him, stood approved by an order of NCLT, Chennai on 20.06.2022, passed in IA(IBC)/643(CHE)/2021 subject to the condition that the Appellant, was directed to deposit the sum of Rs.10,11,00,000/-.

The Appellant contended that as per the Resolution Plan which ultimately stood approved by the National Company Law Tribunal, he has already deposited a sum of Rs.1,03,25,000/- and has also deposited the security deposit of a sum of Rs.46,25,000/- which is kept in the escrow account, as it was then directed by the Learned Adjudicating Authority. However, he could not deposit the balance amount which was due to be paid under the approved Resolution Plan of 20.06.2022, within the stipulated time period and since the condition of the Resolution Plan was not complied with, the Respondent filed an application IA No. 429/2023 praying for that owing to non-compliance of the order of 21.06.2022, the order under section 33(3) of I & B Code be passed to liquidate the Corporate Debtor and the liquidator may be appointed for administrating the liquidation process of the Corporate Debtor.

The Appellant contended that he had pleaded that there were certain unavoidable circumstances because of which he could not deposit the amount and

he stated that he would be depositing a sum of Rs.1 Crore on or before 30.06.2023 and the balance was assured to be paid by him by 15.07.2023, and that on 22.06.2023, he had filed an affidavit by way of an undertaking to deposit the aforesaid balance amount by 22.06.2023 and 30.06.2023. The said affidavit of undertaking given by the Appellant finds place on the records of the proceedings before the Learned Adjudicating Authority.

But however, despite of the undertaking given by the Appellant on 22.06.2023 and also by way of an affidavit, he could not honor the same, and the deposit thus assured to be paid under the affidavit could not be deposited within the timelines as provided therein, that is, by the cut-off date of 17.07.2023. Owing to the non-compliance of the undertaking has given by him to deposit the amount payable under the approved Resolution Plan, and because of its non-compliance, the Learned Adjudicating Authority, an application by the Resolution Professional (now liquidator) while exercising its powers under sub-section (3) of section 33 of I & B Code, 2016 had proceeded to pass an order on IA No.429/2023 ordering the liquidation of the Corporate Debtor and appointing a liquidator, by an order of 26.07.2023.

The Appellant's contention is, that at the stage when the said IA praying for liquidation of the Corporate Debtor was under consideration, the Appellant was able to identify a potential investor and was even able to mobilize the funds and thus he filed IA No.1748/2023 praying for depositing the balance amount of Rs.9,37,500/- as per the approved Resolution Plan dated 20.06.2022 and for

staying liquidation proceedings and for withdrawal of personal insolvency application by 2nd Respondent / SIDBI so that he will be able to deposit the balance amount. However, the said IA came up for consideration before the Learned Adjudicating Authority on 15.12.2023, the Judgment was reserved on it, and later on the same was rejected by the Impugned Order of 10.05.2024. Hence, he has filed the instant Appeal.

When the Appeal was taken up at the admission stage, the parties to the Appeal were represented by their respective counsels and in fact the liquidator / Respondent No.1 and the Learned Counsel for Respondent No.2, had unanimously expressed that they would not have any objection as such if the Appeal itself is allowed and the Appellant may be permitted, as prayed for by IA No.1748/2023, to deposit the balance sum of Rs.9,37,50,000/- within a fixed timeline, for which they may not be having any grievances as such. The logic which has been assigned by the Respondents for accepting the relief prayed for by the Appellant, was accepted because of the fact that even after one year from the date of liquidation and the appointment of liquidator, the Respondents have not been able to find a buyer for the Corporate Debtor. Owing to the aforesaid consent extended by the counsels for both Respondents, we venture into the merits of the case even while we are conscious of the fact that once the order appointing the liquidator under sub-section 3 of section 33 of I & B Code, 2016, i.e., dated 26.07.2023, had attained finality, and admittedly the Appellant has not put a challenge to it, no consideration would normally be extended to him because

he has failed to comply with the conditions of the Resolution Plan of depositing the balance amount which he assured to pay on 20.06.2022 and thereafter on 22.06.2023 and that, once the order of liquidation has already been passed on 27.06.2023 the Appeal ought not to have been entertained because normally the same would not be legally tenable.

But then looking at the concept of the ‘doctrine of necessity’, which has to be read in accordance with the provisions contained under section 60(5) of I & B Code, 2016, it provides for meeting out such inevitable circumstances in form of the powers vested with the Tribunals and particularly the NCLT as referred to in sub-section (5) of section 60 of I & B Code, 2016, to pass any appropriate order for fruitfully disposing of any application or proceedings in order to meet the purpose of CIRP, as against the Corporate Debtor. In the instant case owing to the Resolution Plan which was submitted by the Appellant and approved by NCLT, the Corporate Debtor was expected to revive back in and to reach the status of being a going concern. Though hesitatingly and particularly considering the stand taken by the Respondent / Liquidator that there is no other Resolution Plan, which has been received by them, coupled with the fact that the prayer as made by the Appellant seeking permission to deposit a sum of Rs.9,37,50,000/- as preferred in IA No.1748/2023 by him, in order to enable him to proceed with the Resolution Plan submitted on 20.06.2022, we are of the view that when the provisions contained under section 60 sub-section (5) of I & B Code, 2016, it starts with a non-obstinate clause, that means it has an overriding effect to any of

the provisions to the contrary, of the Code as contained therein and that the exercise of inherent powers have been vested with the Tribunal to carry out the exceptions in order to meet out the objective of the Code in order to avoid liquidation and to enable the Corporate Debtor to transition into position of being a going concern. Provisions of section 60(5) of I & B Code is extracted hereunder: -

“Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code”.

Though sub-section (5) of section 60 as extracted above, refers to NCLT only, the said reference of NCLT has to be given its logical interpretation for the reason being that the NCLT as referred under sub-section (5) of section 60 of I & B Code, 2016, has had to be extended to cover the NCLAT as well because the proceeding before NCLAT in exercising of its Appellate powers under section 61 of I & B Code, 2016, happens to be a proceeding in continuance to the proceedings before the NCLT. Accordingly, it would follow that the NCLAT too

can extend its powers under section 60(5) to meet out the ends of Justice in order to avoid liquidation of the Corporate Debtor.

Thus, owing to the aforesaid fact and particularly in order to satisfy the ingredients of the doctrine of necessity, when particularly there happens to be no other Resolution Plan received by the liquidator, we are of the view that in case if the Appellant is provided with the last opportunity to deposit into the bank account of the liquidator an amount of Rs.9,37,50,000/- as prayed for IA No.1748/2023, it would meet the objective of the CIRP Proceedings, as it stood initiated on 21.11.2019 otherwise, refusal permit the Appellant to deposit the amount would amount to rendering the entire proceedings of the Company Petition as to be an act of futility.

In that eventuality, though admittedly the law is not in favour of the Appellant, because he has not put a challenge to the order of appointment of liquidator, but since the liquidator himself supports the contention of the Appellant, the Appellant is granted a last opportunity to deposit the amount as referred to in IA No.1748/2023, which is to be positively deposited within a period of one month and if the said deposit is not made by the Appellant within the aforesaid time frame, the relaxation which has been granted to the Appellant in the light of the provisions contained under section 60(5) of I & B Code, 2016, will automatically lapse and it will open for the liquidator to seek for an appropriate alternate buyer by resorting to the procedure prescribed under law. It is made clear that no further extension would be granted in the furtherance of the

approval of the Resolution Plan dated 20.06.2022. Subject to the above the Comp App (AT) (CH) (Ins) No.246/2024 would stand allowed, subject to the aforesaid modification of granting liberty to the Appellant for depositing the amount. The Company Appeal would stand disposed of accordingly.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

24.07.2024

VG/TM