

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.1637 of 2023**

**IN THE MATTER OF:**

**Committee of Creditor  
Through its lead Bank Bank of Baroda** **...Appellant**

**Versus**

**Vivek Raheja, Resolution Professional of  
Baghault Sugar & Distillery Ltd. & Anr.** **...Respondents**

**Present:**

**For Appellant: Mr. Abhijeet Sinha, Mr. Abhindra Maheshwari,  
Mr. Akash Chatterjee, Advocates.**

**For Respondents: Mr. Ritin Rai, Sr. Advocate with Ms. Gunjan M.,  
Mr. Karan Gandhi, Mr. Shivam Gautam,  
Advocates for R-1 (RP).**

**Mr. Amar Vivek, Mr. Aditya Gauri and Mr.  
Abhishek Dua, Advocates.**

**With**

**Company Appeal (AT) (Insolvency) No.1640 of 2023**

**IN THE MATTER OF:**

**Dalmia Bharat Sugar and Industries Limited  
Successful Resolution Applicant  
Baghault Sugar & Distillery Ltd.** **...Appellant**

**Versus**

**Vivek Raheja, Resolution Professional  
Baghault Sugar & Distillery Ltd. & Anr.** **...Respondents**

**Present:**

**For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr.  
Amar Vivek, Mr. Aditya Gauri and Mr. Abhishek  
Dua, Advocates.**

**For Respondents: Mr. Karan Gandhi, Mr. Shivam Gautam,  
Advocates for R-1.**

**Mr. Vishal Goenka, Advocate for R-3.**

**With**

**Company Appeal (AT) (Insolvency) No.1641 of 2023**

**IN THE MATTER OF:**

**Dalmia Bharat Sugar and Industries Limited**

**...Appellant**

**Versus**

**Ajay Kumar Shukla & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Amar Vivek, Mr. Aditya Gauri and Mr. Abhishek Dua, Advocates.**

**For Respondents: Mr. Karan Gandhi, Mr. Shivam Gautam, Advocates for R-1.**

**Mr. Arun Kathpalia and Mr. Anand Chibber, Sr. Advocates with Mr. Abhishek Anand, Mr. Aditya Singh and Mr. Pratik Kumar, Advocates for Suspended Management.**

**With**

**Company Appeal (AT) (Insolvency) No.1642 of 2023**

**IN THE MATTER OF:**

**Committee of Creditor**

**Through its lead Bank Bank of Baroda**

**...Appellant**

**Versus**

**Ajay Kumar Shukla & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Abhijeet Sinha, Mr. Abhindra Maheshwari, Mr. Akash Chatterjee, Advocates.**

**For Respondents: Mr. Karan Gandhi, Mr. Shivam Gautam, Advocates for R-1.**

**Mr. Arun Kathpalia and Mr. Anand Chibber, Sr. Advocates with Mr. Abhishek Anand, Mr. Aditya Singh and Mr. Pratik Kumar, Advocates for Suspended Management.**

**With**

**Company Appeal (AT) (Insolvency) No.1643 of 2023**

**IN THE MATTER OF:**

**Vivek Raheja**

**...Appellant**

**Versus**

**Committee of Creditor**

**Through its lead Bank Bank of Baroda & Anr.**

**...Respondents**

**Present:**

**For Appellant: Mr. Karan Gandhi, Mr. Shivam Gautam, Advocates with Mr. Vivek Raheja, RP in person.**

**For Respondents: Mr. Abhijeet Sinha, Mr. Abhindra Maheshwari, Mr. Akash Chatterjee, Advocates.**

**Mr. Amar Vivek, Mr. Aditya Gauri and Mr. Abhishek Dua, Advocates for SRA.**

**J U D G E M E N T**  
**(22<sup>nd</sup> December, 2023)**

**Ashok Bhushan, J.**

In these groups of appeals challenge is made to the order dated 24.11.2023 passed by Adjudicating Authority (National Company Law Tribunal, Allahabad Bench, Prayagraj) in I.A. No. 243 of 2023 filed by Resolution Professional for approval of the Resolution Plan and I.A. No. 434 of 2023 filed by Suspended Director of the Corporate Debtor praying for dismissal of I.A. No. 243 of 2023.

2. Committee of Creditors aggrieved by both the aforesaid orders have filed Company Appeal (AT) (Ins.) No.1637 of 2023 and Company Appeal (AT) (Ins.) No.1642 of 2023. The Successful Resolution Applicant Dalmia Bharat

Sugar and Industries Limited have challenged the aforesaid two orders by filing Company Appeal (AT) (Ins.) No.1640 of 2023 and Company Appeal (AT) (Ins.) No.1641 of 2023.

3. The Resolution Professional Mr. Vivek Raheja has filed Company Appeal (AT) (Ins.) No.1643 of 2023 challenging the order dated 24.11.2023 in I.A. No. 243 of 2023 filed by the Resolution Professional for approval of resolution plan.

4. The Appellant's are not aggrieved by the order of the Adjudicating Authority approving the resolution plan submitted by Successful Resolution Applicant but they are aggrieved only against one of the direction issued in the impugned order by which Adjudicating Authority has directed the Resolution Professional and CoC to move an application before the Hon'ble Supreme Court for seeking clarification in context of the order dated 21.11.2013 passed by Hon'ble Supreme Court.

5. Brief facts necessary to be notice for deciding these appeals are:

5.1 On an application filed by Bank of Baroda under Section 7 Adjudicating Authority admitted Section 7 application by order dated 07.02.2020. Form-G was published by Resolution Professional. Suspended Director of the Corporate Debtor have filed an I.A. No. 161 of 2020 challenging the issuance of Form-G on the pretext of embargo as contained in the order of the Hon'ble Supreme Court dated 21.11.2013. Suspended Director of the Corporate Director has also filed an application praying that Resolution Professional be restrained from proceedings with the

CIRP process. On 06.08.2020 CoC again decided to issue Form-G. Adjudicating Authority also granted an opportunity to the Suspended Board of Director to give onetime settlement proposal to the Committee of Creditors. On 11.11.2020 another application was filed by Suspended Directors of the Corporate Director being I.A. No. 49 of 2021, in the application modification of various orders passed earlier was sought for.

5.2 Adjudicating Authority by the order dated 27.08.2021 has observed that it is open for the Suspended Management to give revised OTS proposal for fresh consideration before the CoC or an alternative Suspended Management may file an application for clarification/ modification of the order passed by the Hon'ble Supreme Court (dated 21.11.2013). In pursuance of the order, liberty granted by order dated 27.08.2021 no application was filed before the Hon'ble Supreme Court by Suspended Board of Management for clarification or modification. Ex-management again gave a OTS proposal dated 30.11.2021 which was deliberated and was not approved by the Committee of Creditors.

5.3 Resolution Plan of the Appellant in its 33<sup>rd</sup> CoC meeting held on 21.04.2023 was approved by 100% vote share. Resolution Professional filed an I.A. No. 243 of 2023 on 20.05.2023 before the Adjudicating Authority praying for approval of the resolution plan. Suspended Board of Director filed an application I.A. No. 365 of 2023 praying for impleadment in I.A. No. 243 of 2023 which was

rejected by the Adjudicating Authority vide order dated 17.08.2023. After dismissal of I.A. No. 365 of 2023 Suspended Board of Management filed another application being I.A. No. 434 of 2023 praying for following reliefs:

*“The relief sought in the present application are as under:-*

- (i) Pass an Order whereby dismissing the Interlocutory Application bearing I.A. No. 243 / ALD/2023 IN C.P. (IB) No. 342 / ALD / 2018 on the ground that the Resolution Plan is not tenable in the eyes of the law as the same is in the teeth of embargo imposed by the Hon'ble Supreme Court in Contempt Petition (C) No. 412/2012 in Civil Appeal No. 9813/2011;*
- (ii) Pass an Order whereby holding that the Resolution Plan filed vide Interlocutory Application bearing I.A. No. 243 / ALD / 2023 IN C.P. (IB) No. 342 / ALD / 2018 by the Resolution Professional qua Committee of Creditors cannot be taken into consideration;*
- (iii) Pass such further Order (s) as this Hon'ble Tribunal may deem fit, just and proper, in the interest of Natural Justice and Equity.”*

5.4 Adjudicating Authority heard the I.A. No. 243 of 2023 and by order dated 24.11.2023 approved the resolution plan submitted by Dalmia Bharat Sugar and Industries Limited. However, while approving the resolution plan Adjudicating Authority noticed the submissions of the Suspended Director of Corporate Debtor on the basis of order of the Hon'ble Supreme Court dated 21.11.2013 and in paragraph 32 has passed an order that approval of the plan ordered in I.A. No. 243 of 2023 is subject to seeking the

clarification from the Hon'ble Supreme Court. Paragraph 32 of the order is as follows:

*“32. This is also noted that an objection application was also filed by the Ex-Management vide IA No.434/2023 raising objection against approval of the Resolution Plan in the face of the order dated 21.11.2013 passed by the Hon'ble Supreme Court in Contempt Petition No. 412 of 2012 in CA No. 9813 of 2011 titled as SEBI vs. Sahara India Real Estate Corporation Ltd as well as the order dated 27<sup>th</sup> August, 2021 passed by this Tribunal. The said IA No. 434 of 2023 has already been dealt with by us separately and same has been dismissed except to the extent of directing the RP/COC to move an application before the Hon'ble Supreme Court for seeking clarification in the context of order dated 21.11.2013 passed by the Hon'ble Supreme Court and order dated 27.08.2021 passed by this Tribunal before commencing implementation of plan. The approval of the plan already ordered by us in the present I.A No. 243/2023 is subject to seeking the clarification from the Hon'ble Supreme Court on the aforesaid terms.”*

5.5 The I.A. No. 434 of 2023 was also decided by the Adjudicating Authority by order dated 24.11.2023 and although the application was dismissed but while dismissing the I.A. Adjudicating Authority directed the Resolution Professional/CoC to move an application before Hon'ble Supreme Court for seeking clarification in the context of the order 21.11.2013. In paragraph 42 of the order following has been stated:

*42. In view of our foregoing discussions, IA No. 434 of 2023 is accordingly dismissed except to the extent of directing the*

*RP/COC to move an application before the Hon'ble Supreme Court for seeking clarification in the context of order dated 21.11.2013 passed by the Hon'ble Supreme Court and order dated 27.08.2021 passed by this tribunal before commencing implementation of plan. The approval of the plan already ordered by us in I.A No. 243/2023 is subject to seeking the clarification from the Hon'ble Supreme Court in the aforesaid terms.”*

6. We have heard Sh. Abhijeet Sinha, Learned Counsel appearing for the Committee of Creditors, Sh. Krishnendu Datta, Learned Sr. Counsel appearing for Successful Resolution Applicant and Sh. Ritin Rai, Learned Sr. Counsel appearing for Resolution Professional. We have heard Sh. Arun Kathpalia, Learned Sr. Counsel and Sh. Anand Chibber appearing for Suspended Director of the Corporate Debtor. Submissions advanced on behalf of the counsel for the appellant are being noticed cumulatively.

7. Learned Counsel for the appellant submits that the order of Hon'ble Supreme Court dated 21.11.2013 passed in Contempt Petition No. 412 of 2012 in Civil Appeal No. 9813 of 2011 restrained, only the Sahara group of companies from parting with any movable immovable properties until further orders. It is submitted that the said order could not have any consequence in the CIRP of the Corporate Debtor i.e. Baghauli Sugar & Distillery Ltd. & Anr., the said order was passed to protect the assets of the Sahara group of companies.



8. The Adjudicating Authority committed error in relying on the said order directing the Resolution Professional/CoC to obtain clarification from the Hon'ble Supreme Court which was uncalled for and unnecessary.

9. The Suspended Director of the Corporate Debtor have been trying to create hurdles in the proceedings of the CIRP and several applications were filed earlier. Adjudicating Authority had passed an order on 27.08.2021 giving option to the Suspended Management to file an application for a clarification/ modification of the order of the Hon'ble Supreme Court but no steps were taken by the Suspended Management to file any clarification and the application which was filed by the Suspended Management being I.A. No. 434 of 2023 was only with object of causing delay and hindrance in the CIRP in the approval of the resolution plan which I.A. has no merit.

10. It is submitted that the Supreme Court itself in an order passed on 27.04.2016 in different I.As in the same CA No. 8643 of 2012 has clarified that order dated 21.11.2013 does not in any manner stop the proceedings before NCDRC which clarification clearly indicates the intent and purpose of the order dated 21.11.2013. It is submitted that resolution plan having been approved the Adjudicating Authority ought not to have put the condition for obtaining clarification by Hon'ble Supreme Court before implementing the plan.

11. Sh. Arun Kathpalia, Learned Sr. Counsel appearing for the respondent submits that order dated 27.08.2021 on which reliance is placed by Learned Counsel for the appellant did not give any option to either proceed for

submitting revised OTS by the Suspended Management or to file an application for clarification. The alternative for filing clarification could arrive only when OTS proposal was to failed. It is submitted that order dated 27.08.2021 has also directed the CoC or the Resolution Professional if they are advised to seek clarification from the Hon'ble Supreme Court. They having chosen not to file an application cannot take any mileage on the fact that no application was filed by Suspended Management for clarification.

12. Sh. Anand Chibber appearing for the Suspended Management Director has also reiterated the same submission and submits that order dated 27.08.2021 also obliged the Resolution Professional and CoC to file the application for clarification.

13. We have considered the submissions of counsel for the parties and perused the records.

14. The main issue to be answered in this appeal is as to whether there was any requirement of issuing direction by the Adjudicating Authority to the Resolution Professional and CoC to obtain clarification from the Hon'ble Supreme Court with respect to the order dated 21.11.2013 before implementing the plan. There is no dispute that resolution plan has been approved with 100% CoC and the same has also received approval by the Adjudicating Authority by the impugned order.

15. Before we proceed further we need to notice the order of the Hon'ble Supreme Court dated 21.11.2013 passed in *Contempt Petition no. 412 of 2012 in Civil Appeal No. 9813 of 2011 S.E.B.I Vs. Sahara India Real Estate*

*Corporation Ltd. & Ors.* Order passed by the Hon'ble Supreme Court is as follows:

*"We are convinced that the order dated 28.10.2013 passed by this Court has not been complied with in its letter and spirit. In such circumstances, we direct that the Sahara Group of Companies shall not part with any movable and immovable properties until further orders. We further direct that all the alleged contemnors shall not leave the country without the permission of this Court.*

*List on 11.12.2013 at 2.00 P.M., for further arguments."*

16. When we look into the order dated 21.11.2013 a direction was to Sahara Group of Companies not to part with any movable and immovable properties until further orders. Direction to Sahara group of companies not to part with movable and immovable properties can have no bearing with resolution plan submitted by Successful Resolution Applicant for consideration by the Adjudicating Authority. The order dated 21.11.2013 cannot be read as any kind of restraint order in the CIRP process of the Corporate Debtor Baghauli Sugar & Distillery Ltd. & Anr. which is also a Sahara group of company. The direction not to part with movable and immovable property was direction to protect the assets of the Corporate Debtor. Any direction to protect the assets of the Corporate Debtor can have no fetter in the consideration of the resolution plan when resolution plan is submitted to revive the Corporate Debtor.

17. Learned Counsel for the appellant has also rightly relied on the order of Hon'ble Supreme Court dated 27.04.2016 passed in different I.As in CA

No. 8643 of 2012. Learned Counsel for the appellant has referred to the order of the Hon'ble Supreme court passed in I.A. No. 166 of 2016 and I.A. No. 147 of 2016 which orders are as follows:

"I.A No. 166 of 2016:

*Heard.*

*By our Order dated 21.11.2013, we had directed that Sahara Group of Companies shall not part with any moveable and immoveable properties until further orders from this Court. That order has remained in force ever since. In the present application, the applicant seeks a clarification to the effect that the order afore-mentioned does not prevent the applicants from executing/enforcing the judgment dated 11.08.2015 passed by NCDRC against Sahara India Commercial Corporation Ltd. in Consumer Complaint No. 47 of 2009. We see no reason to decline that prayer. We accordingly clarify that our Order dated 21.11.2013 passed in Consumer Complaint No. 47 of 2009 in Contempt Petition No. 412 of 2012 in Civil Appeal No. 9813 of 2011 shall not prevent the applicant from executing the judgment dated 11.08.2015 of the NCDRC passed against Sahara India Commercial Corporation Limited in Consumer Complaint No. 47 of 2009 in accordance with law.*

I.A. No. 147 of 2016:

*In this application seeking intervention by the applicants, the applicant's precise grievance appears to be that Complaint Case No. CC/13/15 filed by him before the State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench, Nagpur is not being proceeded with on account of our Order dated 21.11.2013 in Contempt Petition No. 412 of 2012 in Civil Appeal No. 9813 of 2011. It is submitted by learned counsel for the intervenor that intervenor-applicant shall be*

*satisfied in case it is clarified that the order passed by this Court on 21.11.2013, whereby this Court restrained the Sahara Group of Companies from alienating any property moveable or otherwise, does not prevent the concerned Consumer Disputes Redressal Commission from proceeding with contempt case filed by the applicants and passing appropriate orders on the same. We see no reason to decline that prayer. We make it clear that our dated 21.11.2013 shall not prevent the concerned Disputes Redressal Commission from proceeding with and passing orders in accordance with law in pending Complaint Case No. CC/13/15 filed by the applicant.*

*I.A. No. 147 of 2016 is accordingly disposed of with the said direction.”*

18. The clarification which was given by the Hon’ble Supreme Court by the aforesaid order clearly indicate that Hon’ble Supreme Court was of the view that on the strength of the order dated 21.11.2013 no proceedings before National Consumer Dispute Resolution Commission can be stopped. Hon’ble Supreme Court categorically made it clear that order dated 21.11.2013 shall not prevent the National Consumer Dispute Redressal Commission from proceeding and passing order in accordance with law. The aforesaid clarification is also relevant with regard to CIRP Process of the Corporate Debtor and the intent and purpose of the order dated 21.11.2013 is very clear as clarified in order dated 27.04.2016.

19. Now we come to the earlier order passed by the Adjudicating Authority dated 27.08.2021 on which reliance has been placed by the Learned Counsel of the Suspended Management. Paragraph 28 & 29 of the order is as follows:

*“28. After hearing the Ld. Counsels for the parties, this Tribunal is of the opinion that it is open for the Suspended Management to give a revised OTS proposal for fresh consideration before the CoC as per law, if they so desire as has also been indicated by the learned counsel for the RP or in the alternative, the Suspended Management may also file an application for clarification/ modification of the order passed by the Hon'ble Apex Court bringing full facts on record and get the said order modified/ clarified by the Hon'ble Apex Court.*

*29. Further the CoC or the RP if they as are advised may also seek clarification from the Hon'ble Apex Court with regard to the continuance of the Corporate Insolvency Resolution Process against the corporate debtor whether the same is in consonance of the orders of Hon'ble Apex Court dated 21.11.2013.”*

20. When we looked into the paragraph 28 of the order, the Adjudicating Authority has clearly observed that it is open for the Suspended Management to give a revised OTS proposal for fresh consideration before the CoC or an alternative Suspended Management may also file an application for clarification/modification of the order passed by Hon'ble Supreme Court. It is noted that OTS proposal was submitted which was not accepted by CoC and that matter is no longer in issue.

21. The order dated 27.08.2021 gave full liberty to the suspended management to file an application before the Hon'ble Supreme Court for clarification or modification. The fact that no application for modification or clarification was filed by the Suspended Management makes it clear that they also are well aware that order dated 21.11.2013 cannot fetter the CIRP process or the resolution plan approval process.

22. Now coming to the observations in the paragraph 29 that **CoC or the RP if they as are advised** may also seek clarification, the above observation clearly meant that if CoC or Resolution Professional are advised only then they can make a clarification. CoC or Resolution Professional being of the opinion that no clarification is required order cannot be read to mean any direction to the CoC or RP to move an application for clarification.

23. In any view of the matter, we are of the view that order dated 21.11.2013 passed by the Hon'ble Supreme Court has no fetter in the CIRP process of the Corporate Debtor nor it can fetter the approval of the resolution plan by the Adjudicating Authority which has been approved by 100% CoC.

24. We, thus, are of the view that Adjudicating Authority committed error in putting a condition in the order approving the resolution plan that Resolution Professional and CoC to obtain a clarification from the Hon'ble Supreme Court with regard to order dated 21.11.2013.

25. In view of the foregoing discussion and conclusion, we decide the appeals in following manner:

25.1 Company Appeal (AT) (Ins.) No. 1637 of 2023, Company Appeal (AT) (Ins.) No.1640 of 2023 and Company Appeal (AT) (Ins.) No. 1643 of 2023 are allowed and the order dated 24.11.2023 passed in I.A. No. 243 of 2023 is modified in so far it has directed the Resolution Professional and CoC to obtain clarification from Hon'ble Supreme Court in context of the order dated 21.11.2013.

The aforesaid direction contained in paragraph 32 & 40 are deleted from the order and rest of the order of the Adjudicating Authority is affirmed.

25.2 Company Appeal (AT) (Ins.) No. 1642 & 1641 of 2023 are allowed to the extent to the observations made in the Paragraph 40 & 42 of the order directing the Resolution Professional and CoC to seek clarification from Hon'ble Supreme Court with regard to the order dated 21.11.2013. The aforesaid direction contained in Paragraph 40 & 42 are deleted. Consequently, the order rejecting the I.A. No. 434 of 2023 is maintained.

Parties shall bear their own cost.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

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

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