

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 55/2024

IN THE MATTER OF:

M/s. Villmar Agro Polymers Pvt. Ltd
Meghana Residency, 2nd Floor,
Gopalakrishna Street, Ramarao Peta, Kakinada,
Andhra Pradesh - 533001

Rep. by Mr. K. Jagadees, Suspended Director

... Appellant

Vs

1. SPC FAB Private Limited Saraswathi Nilayam,
No.746/42, 5th Main Road, 4th Cross,
Vijayanagar, Bangalore - 560 040

2. Mr. Sivarama Prasad Gudipati
(IRP of M/s. Villmar Agro Polymers Private Limited)
3-28-32, Adilakshmi Nilayam, Ground Floor,
Brundavan Gardens, 4th Lane, Guntur,
Andhra Pradesh - 522066

.... Respondents

Present:

For Appellants : Mr. AG. Sathyanarayana, Advocate

JUDGMENT
(Hybrid Mode)

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

The Appellant questions the propriety of the impugned order dated 17.11.2023, as it has been passed by the Learned Adjudicating Authority, NCLT, Amaravathy bench in IA No. 204/2023 in CP(IB/114/9/AMR/2022. The contentions of the Appellant are that the Learned Adjudicating Authority has erred in law, by first passing the order on IA (IBC)202/2023 filed by the

Respondent No. 2 herein and consequently taking the said impugned decisions as rendered on 17.11.2023, as to be the basis for passing the order on IA (IBC)/204/23 which is impugned in the instant company appeal.

2. The brief facts are, that the company under the name of M/s. Villmar Agro Polymer Pvt. Ltd., owing to the financial debt was admitted into CIRP proceedings by an order 12.04.2023, as rendered in CP (IB) No.114/9/AMR/2022, and by the same order, Mr. Sivarama Prasad Gudipati (Respondent No. 2), was appointed as Interim Resolution Professional (IRP) to undertake the CIRP proceedings.

3. It is the case of the Appellant that, the suspended directors of the corporate debtor, came to know about the CIRP proceedings, only after the receipt of the letter served on 21.04.2023, which the appellant contends was served by Respondent No. 2, wherein the request was made to the appellant to provide all the documents and information to the IRP so as to facilitate CIRP proceedings of the corporate debtor as directed by the order of the Learned Adjudicating Authority on 12.04.2023.

4. The Appellant contends that, after coming to know about the order of Ld. NCLT dated 12.04.2023, through the letter of 21.04.2023 which was served by the Respondent No.02, he filed an application being IA No. 204/2023, before Ld. NCLT on 28.04.2023 praying that the ex-parte order dated 12.04.2023 may be set

aside since it was rendered without providing an adequate opportunity of hearing to him and that the same may be re-called and be re-decided on its merit.

5. The Appellant further states that the company petition, was filed by Respondent No.1 who is an operational creditor, against the corporate debtor under Section 9 of I & B Code, claiming that a debt of Rs. 1,69,55,321/-, has fallen due and not been paid despite making the demand under Section 8 of the I & B Code. 2016. He contends that since the debt has not been proved, the proceedings under section 9 of the I & B code ought not to have been drawn by the Learned Adjudicating Authority in the first place and that, secondly, since the said proceedings were not in his knowledge, in the absence of any notice being served upon by the Applicant/Respondent No.1 herein, the order of 12.04.2023 may be re-called for which he had filed IA No. 204/2023. Thus, the prime concern which the appellant has canvassed in the present appeal was that, when he has already preferred IA No.204/2023 in the aforesaid company petition CP(IB)/114/9/AMR/2022, seeking a recall of the order dated 12.04.2023, owing to the fact that, the said order was passed in derogation to the principles of natural justice, it ought to have been recalled and the petition should have been re-heard to be decided on its merits instead of drawing inference from the decisions which were taken on the same day i.e. 17.11.2023 in IA(IBC)/202/2023 and determining it as to be the basis for rejecting his application IA(IBC)/204/2023, holding thereof that since IA(IBC)/202/2023 in CP (IB/114/9/AMR/2022) has been allowed based on valid and convincing reasons, the application of IA No.

204/2023 preferred by the appellant for recalling of the order that admitted the corporate debtor to face the CIRP proceedings cannot survive. The Appellant contends that, before passing the order on 17.11.2023 on an application that was filed under section 19(2) of the I & B Code, 2016 his application in IA No. 204/2023, seeking to recall the ex-parte order dated 12.04.2023 should have been considered and it should not have been closed on an application filed under section 19(2), where the relief sought, was to direct the respondents to co-operate with the Corporate Insolvency Resolution Process (CIRP) and to handover all the assets, properties, and the books of accounts and all such other documents relating to the corporate debtor so as to facilitate CIRP proceedings.

6. The Learned Adjudicating Authority after considering the rival contentions qua the application IA No. 202/2023, preferred under section 19(2) of I & B Code, has allowed the same by an order dated 17.11.2023 with the following observations:

“In view of the above facts and circumstances, this Tribunal finds the reasons mentioned in the application valid and convincing. The application is allowed directing the respondents to furnish the requisite information/ documents and any further information/documents as may be needed to the Applicant details of which shall be specifically stated once again by the Resolution Professional and be communicated to the Respondents within 7 days from the date of the order and the Respondents shall within 10 days from the date of issuance of this order, comply the same.

In default the Resolution Professional can approach this Tribunal for necessary direction.

Accordingly, IA(IBC)/202/2023 in CP(IB)/114/9/AMR/2022 is allowed and disposed of”.

7. The impugned order dated 17.11.2023, was passed on IA (IBC)/204/2023, which was filed by invoking the provisions under section 60(5) of the I & B Code read with rule 49(2) of the NCLT rules. In this application, the Appellant had prayed for recalling of the order of Ld. NCLT directing initiation of CIRP proceedings against the corporate debtor on the grounds that it was passed ex-parte. However, the said application was laid to rest because of the closure of the proceedings in IA No. 202/2023 filed by Respondent No. 2 under section 19(2) of the Code, where Learned Adjudicating Authority allowed the same, directing the Appellants herein to furnish the required information as called for and accordingly, found no merit in the contentions put forth in IA No. 204/2023.

8. The contentions of the Appellant that, his application in IA No. 204/2023 preferred under section 60(5) of the I & B Code to be read with the rule 49(2) of the NCLT rules, should have been taken up for consideration and for decision prior to IA(IBC)/202/2023 is un-called for, for the reason being that the CIRP proceedings as initiated by the order of 12.04.2023 has already been given effect to, and moratorium contemplated under section 14 of the I & B code, 2016 has already been enforced. Further, the fact that the Corporate Debtor had already vacated the premises about four years back and that the inferences drawn upon

the inspection of the records as available with the RoC, and as per the share allotment letter of 08.01.2018 pointed to the need for considering the application under section 19(2) of the Code, on a priority basis so as to facilitate CIRP proceedings already ordered to be carried out in a move effective manner. In this context, the dismissal of the application preferred by the appellant, being IA(IBC)204/2023, on the ground that no adjudication on merits is required to be made on the said application, because of the order passed on IA No. 202/2023, is absolutely justified, because section 60(5) will not have a superseding effect to the provisions contained under section 19(2) to be read with section 14 of I & B code, 2016 for the purpose of effective conduct of CIRP proceedings. We find that the application being IA No. 204/2023 has been rightly rejected by Learned Adjudicating Authority because after the order was passed on IA(IBC)202/2023, the application IA No. 204/2023, preferred on the ground that, the order of initiation of CIRP proceedings on 12.04.2023 was ex-parte and without giving a reasonable opportunity of the hearing, was not required to be ventured on its own merits because the order 17.11.2023 as passed in IA (IBC)/202/2023 would not prejudice at all, the rights of the appellant to recall, the order as alleged to be an ex-parte order of 12.04.2023.

9. Further, the order passed on IA No.204/2023 cannot be said to be an ex-parte order, contrary to the claim of the Appellant for the reason being that according to the Appellant's own case, a counsel was engaged by him, who did not file vakalathnama or counter affidavit and in the absence of there being any

effective assistance being provided by the Appellant herein to the Learned Adjudicating Authority, the Learned Adjudicating Authority, by order of 29.08.2023, directed the matter to be proceeded ex-parte.

10. Consequently, we do not find any merits in the appeal and the same would accordingly stand 'dismissed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

13.11.2024
SN/TM