NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS) No. 206 / 2024
(IA Nos. 563, 564 & 565 / 2024)

In the matter of:

M/s. Meir Commodities India Pvt. Ltd.
Prospective Resolution Applicant of
NCS Sugars Ltd.
Represented by Mr. Vijay Thakkar
Plot No. 14 & 15, Sector 18,
Vashi, Navi Mumbai - 400703 **….. Appellant**

V

(1) Mr. Narayanam Nageswara Rao,
Erstwhile Promoter Director of
M/s. NCS Sugars Limited
Plot No. 9, HUDA Enclave,
Road No. 69, Nandagiri Hills,
Jubilee Hills, Hyderabad **– 500033**

(2) Mr. K. Sivalingam,
Resolution Professional of
M/s. NCS Sugars Limited
R/o. Flat No. 1603, Tulive Horison Residences,
16/01, Arunachalam Road,
Saligramain, Chennai
Tamilnadu – 600093

(3) Committee of Creditors
M/s. NCS Sugars Limited
Represented by Alchemist ARC Limited
Address:
A-270, 1st and 2nd Floor, Defence Colony,
New Delhi – 110024 **….. Respondents**

Present :

For Appellant : Mr. PH. Arvindh Pandian, Senior Advocate
For Mr. Ananth Merathia, Advocate

For Respondents : Mr. Y. Suryanarayana, Advocate for R2

O R D E R
(Hybrid Mode)

27.06.2024:

Justice Sharad Kumar Sharma, Member (Judicial):

The instant Company Appeal, being Comp. App (AT) (CH) (INS) No. 206 / 2024 (hereinafter to be referred as a `Company Appeal'), has been preferred by the Appellant (the `Prospective Resolution Applicant'), who has put in a challenge to the Impugned Order dated 08.05.2024, as it has been rendered by the Learned Adjudicating Authority in IA (IBC) / 897 / 2024 & IA (IBC) / 898 / 2024, as it was preferred in CP (IB) No. 299 / 7 / HDB / 2018.

2. By the said Impugned Order under challenge, NCLT, Hyderabad, allowed the Application IA (IBC) / 897 / 2024 & IA (IBC) / 898 / 2024 filed under Section 60(5) of the I & B Code, 2016, by Respondent No. 1 herein, holding him to be eligible to submit a Resolution Plan and permitting him to participate as a Resolution Applicant. Aggrieved by the said Order, this Appeal has been filed.

3. Brief facts of the case are;

(i) CIRP proceedings were initiated against the Corporate Debtor M/s. NCS Sugars Limited on 24.06.2022, based on Section 7 Application filed by Punjab National Bank (Financial Creditor).

(ii) Resolution Professional invited expression of interest, calling for Prospective Resolution Applicants in Form G on 19.09.2022, 05.10.2022, 05.02.2024 and 24.02.2024.

(iii) Appellant expressed his interest to participate as Resolution Applicant by a letter dated 19.09.2023 to RP and submitted his Application on 05.03.2024.

(iv) Committee of Creditors (CoC) in its 18th Meeting dated 07.03.2024 disqualified Respondent No. 1 from participating in CIRP citing Section 29A (b) & (f) of I & B Code, 2016.

(v) On 20.03.2024, Resolution Professional shared the provisional list of PRAs (Prospective Resolution Applicants), inviting objection to the same, indicating that the list will be finalised by 04.04.2024 and Resolution Plan will be requested from the PRAs by 09.04.2024.

(vi) Respondent No.1 aggrieved by decision of the CoC filed IA No. 897 / 2024, praying to set aside the decision of the CoC and to permit him to participate as Resolution Applicant and IA No. 898 / 2024, praying to stay all further proceedings or to direct the Resolution Professional to provide

him evaluation Matrix and Information Memorandum and to permit him to participate as Resolution Applicant.

4. It is the contention of the Appellant that the Impugned Order dated 08.05.2024 severely affects his material rights and besides, the same is liable to be set aside, being contrary to the provisions of the I & B Code, 2016, and as well as the various Judicial Precedents which the Learned Senior Counsel has relied on during the course of the argument, for the purposes of sustaining this Appeal at the behest of the Appellant.

5. It is contended by the Appellant that the Impugned Order under challenge i.e. the Order dated 08.05.2024, suffers from material irregularity, owing to the fact that by virtue of the same, the Respondent No.1 herein has been permitted to participate in the Resolution Plan submission process of the Corporate Debtor, despite clearly being ineligible under Section 29A and as he does not satisfy the requirements, as prescribed under law.

6. He has further contended that, as far as provisions contained under Section 29A which has been inserted in the Code are concerned, the basic intention of the legislature has been to restrict entry into the Resolution process of a person who has apparently contributed to the down fall of a Company and has been a defaulter and to prevent him from taking control over the Company by a back door entry in the role of a Resolution Applicant.

7. He has further contended that the Respondent No.1 (the `erstwhile Promoter / Director of the Corporate Debtor'), has subsequently been declared as a `Wilful Defaulter', by the Financial Creditor and that status has not changed materially. He has only obtained an Interim Suspension Order from the Hon'ble High Court of Telangana against such declarations of being a `Wilful Defaulter' which would have prevented him to apply as a Resolution Applicant. Interim Order does not change that status and hence, if he is allowed as Resolution Applicant, substantial damage will be done to the Insolvency Resolution Process of the Corporate Debtor.

8. He has further contended that under the garb of the said Interim Order, the Respondent No.1 cannot be absolved from the trap of being the `Wilful Defaulter', till the issue is finally adjudicated about eligibility by the Hon'ble High Court and that the NCLT has erroneously interpreted the implications of the Interim Order which was granted by the Hon'ble High Court of Telangana, with regards to the eligibility and has erred in permitting Respondent No.1 to submit a Resolution Plan, thus, giving a way for him to gain a leverage over the others, for the purposes of participation in the process of the CIRP (Corporate Insolvency Resolution Process).

9. It is not in doubt that the Appellant was one of the Prospective Resolution Applicants, and it is possible that he was agitating a cause on behalf of such 16 eligible PRAs who were alleged to have shown interest in submitting their

Resolution Plan. However, no Resolution Plans were actually submitted at the time of passing of Impugned Order and hence, he cannot contend that by the Impugned Order which has been passed, it has resulted in a financial loss of any nature for the Corporate Debtor as all the eligible PRAs were available to be considered for consideration as Resolution Applicants at that point of time and there is no whisper of any Resolution Applicants being wronged / discriminated against.

10. In the aforesaid IA cited by the present Appellant being IA (IBC) / 897 / 2024, the Learned Adjudicating Authority has set aside the decision taken by Respondent No. 2 in the 18th Committee of Creditors Meeting dated 07.03.2024, to the extent that it relates to the Agenda No. 8, which declared that the Respondent No. 1 herein is not eligible to submit a Resolution Plan and consequentially not permitted to participate as a Resolution Applicant.

11. The Appellant has approached this Tribunal solely on the basis of the status which he enjoys of being included in the provisional list of the Prospective Resolution Applicants as finalised in 18th Committee of Creditors Meeting in Agenda No. 8.

12. The question which arises for consideration before us is as to whether at all, the Appeal at the behest of the present Appellant, could be maintainable, when his status only happens to be that of only a Prospective Resolution Applicant and

his individual rights are not at all being affected by the Impugned Order, which has been passed by the Learned Adjudicating Authority, while deciding the IA (IBC) / 897 / 2024, in which the decision taken by the Committee of Creditors dated 07.03.2024, disqualifying the Respondent No. 1 was set aside. The question which also arises is as to whether at all, it warrants an interference by us.

13. The Learned Adjudicating Authority while recording its finding on the implications of Section 29A(j), had ultimately held that, in view of the implications drawn by explanation to the provision and certain relaxations, as contemplated under Section 29A for MSME Sector, Committee of Creditors' action in disqualifying Respondent No.1 is not correct and had accordingly directed the Resolution Professional to permit Respondent No. 1 to participate in the Resolution Process of the Corporate Debtor.

14. As the present Appellant who at the relevant time, had admittedly enjoyed the status of being a Prospective Resolution Applicant, the question would be as to whether he could at all be held to be personally aggrieved by the Impugned Order, as there is no direct prejudice to his legal rights, being caused by the Impugned Order, passed in IA (IBC) / 897 / 2024 apart from the allegations that CIRP with respect to the Corporate Debtor will suffer irreparable damage.

15. The Learned Senior Counsel for the Appellant, in support of his contentions that he is an Aggrieved Person while challenging the Impugned

Order, has relied upon the Judgement dated 24.01.2024, as rendered by the Principal Bench, NCLAT, New Delhi, in the matters of **Comp. App (AT) (INS) No. 1650 / 2023*, PRIO S.A. v. Mr. Pravin R. Navandar & 2 Ors*.** Particularly, he has made reference to Para 10 of the said Judgment, in the context as to whether at all the present Appellant in his status of being the PRA has, any legally vested right to pursue the proceedings, by way of Company Appeal against the decision impugned in the Appeal. Para 9 & 10 of the Judgment in *PRIO S.A. v. Mr. Pravin R. Navandar & 2 Ors*., is extracted hereunder:

> ``*9. The impugned order of the Adjudicating Authority clearly indicates that Adjudicating Authority proceeded to consider the objections raised by the Appellant to the process under which RP and CoC has approved the offer submitted by Respondent No.2. The Adjudicating Authority proceeded to examine the said contention on merits and has rejected the same by the impugned order. The fact that Adjudicating Authority proceeded to examine the contentions raised by the Appellant on merits itself indicate that objections raised by the Appellant required consideration. The Adjudicating Authority proceeding to examine the objections on merits and thereafter saying that Appellant has no locus is a contradiction in itself.*
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> *10. Apart from above, when we look into the facts and sequence of events, the Appellant has submitted offer after receipt of EOI and RFRP for Resolution Plan. The Appellant also revised its offer and had negotiation with CoC and RP, which is a fact established from the record. The RP and CoC interacted with the Appellant in respect of its offer and it appears that on the basis of the offer submitted by the Appellant Right of First Refusal was exercised by Respondent No.2 and consequently offer was received*

from Respondent No.2, which find favour by the CoC. The Appellant, who participated in the process cannot be said to be a person having no locus to object the Application filed by the RP for approval of offer submitted by Respondent No.2.''

16. It is to be noted that the observations made in Para 10 of the said Judgment extracted above, which the Learned Senior Counsel, attempts to employ to support the Company Appeal filed by the present Appellant, in his capacity of being a PRA and to prove his locus standi, cannot be read in isolation to the observations, which had been made in Para 9 of the said Judgment of PRIO S.A. (Supra).

17. In the above case, the Appellant had participated in the Resolution process, he had submitted offer after receiving EOI & RFRP, he had revised his Offer and had negotiations with the Committee of Creditors and the Resolution Professional before his offer was overlooked. Therefore, NCLAT held that the Appellant who had participated in the process cannot be said to be a person having no locus to object to the Application filed by the Resolution Professional, more so, because the learned Adjudicating Authority, had proceeded to examine his objections on merits and, that the Appellant will have the locus standi to challenge the Impugned Order where his intervention was rejected.

18. The above case is materially different from the instant case, where the Appellant seeking to challenge the Order of NCLT is merely a Prospective

Resolution Applicant, has only submitted his Expression of Interest and his Offer has not yet been overlooked in favour of Respondent No. 1 herein, by virtue of the Impugned Order.

19. The Learned Senior Counsel for the Appellant had relied upon yet another Judgment, as it has been rendered by this Bench of the NCLAT in ***Comp. App (AT) (CH) (INS) No. 166 of 2021, Committee of Creditors of Meenakshi Energy Limited v. Consortium of Prudent ARC and another,*** to support his claim of having a right to Appeal against the Impugned Order.

20. In the case at hand, Appeal had been preferred against the Order of NCLT in rejecting the Application in IA No. 244 /2021, which had been preferred in the connected Company Petition. This case is on a different pedestal altogether, where the Committee of Creditors had extended the timelines for the RFRP while dealing with the Resolution Plans which had been submitted before it, as per the earlier timelines for consideration and secondly, where the question was, as to whether, the Committee of Creditors was well within its power to keep on extending timeline beyond 330 days under the guise of maximization of value.

21. The Learned Senior Counsel has referred to Para 6 & 90 of the said Judgment to support his contention that the Appellant has locus standi to prefer an Appeal in the instant case. The Para 6 of the said Judgment, is extracted hereunder:

`` 6. The Learned Counsel for the Appellant/ Second Respondent contends that the 'impugned order' of the 'Adjudicating Authority' had addressed the First Respondent/ 'Prospective Resolution Applicants' Application on merits directly, without even addressing the preliminary issue of 'Maintainability' and 'Locus-standi' of the First Respondent/ 'Prospective Resolution Applicant to raise any objection in the 'Corporate Insolvency Resolution Process'.''

22. It is seen that the said Para, had not laid down any ratio, as it was only an expression which was being made by the concerned Counsel therein in his arguments, pertaining to the issue raised, in respect of Maintainability and Locus Standi, Qua the Prospective Resolution Applicant to raise an objection in the CIRP proceedings.

23. Thus, the implications of Para 6, contrary to what has been argued by the Learned Senior Counsel for the Appellant and as extracted above, was not the ratio decidendi by the Tribunal.

24. In Para 90 of the said Judgment, the Appellate Tribunal has observed that if the question of jurisdiction or the competence to initiate the proceedings or to enforce a right, is agitated before the Learned Adjudicating Authority, by invoking a provision, contained under Section 60 (5) (c) of the I & B Code, 2016, the said question is required to be determined by the Learned Adjudicating Authority, and in the absence of any finding on the same, if any Orders were passed on an Interlocutory Application filed even by a person who is not otherwise legally eligible, would render the Judgment to be perverse.

25. Para 90 of the said Judgment is extracted hereunder:

> *``90. Continuing further, this 'Tribunal' relevantly points out that in the 'Impugned Order' dated 24.06.2021 in IA No.244/2021 in CP (IB) No.184/HDB/7/2019, the Adjudicating Authority, (National Company Law Tribunal, Bench II, Hyderabad) had not dealt with the aspect of 'pleas' of 'Locus Standi' of the First Respondent/Prospective Resolution Applicant to file IA No.244/2021 and the 'Maintainability' of the 'Application', (although the said pleas were taken by the Committee of Creditors of Meenakshi Energy Ltd as well as by the Resolution Professional) to the effect that 'as on date, 'no adjudication' has been made in regard to the 'Resolution Plan'. However, keeping in mind the jurisdiction of the 'Adjudicating Authority', (National Company Law Tribunal) as per ingredients of Section 60(5)(c) of the I&B Code, 2016, 'this Tribunal' holds that the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench-II) is entitled to determine the question of priorities, question of law or facts arising out of or in relation to Insolvency Resolution (relating to the 'Corporate Debtor') in I.A. No.244 of 2021 in CP (IB) No.184/HDB/7/2019 and to dispose of the same on merits, of course, by passing a reasoned/speaking order.''*

26. With due reverence at our command, we are of the view that vide Para 90 of the Judgment an interference was made by this Tribunal, because the question of Locus and Maintainability, in the said case was not considered by the Learned Adjudicating Authority, and no finding was recorded on that. But, that in itself will not make the Prospective Resolution Applicant in the instant case, eligible to sustain the Appeal Proceedings, since no prejudice as such, is being caused to his rights which had been provided under the Statute. The issue in the aforesaid Judgment was dealing only with a question, that when an Application

is being preferred by the Prospective Resolution Applicant, the question of locus and maintainability is required to be considered and dealt with by the Learned Adjudicating Authority, before the passing of Orders on merit and not otherwise. The said Para 90 has been misconstrued by the Learned Senior Counsel for the Appellant, to be applied against the facts of the instant case, because, it is settled Law that the principle or proposition laid by the precedence, are not to be applied in toto without considering the facts and circumstances of each case, under which the same has been delivered by the Court / Tribunal.

27. Applicability of Law, always depends upon the facts and circumstances of the case, and it is always the facts and circumstances, which ought to be circumscribed first to be considered as to whether, they could be brought to be applied for an extension of Statutory Rights, as contemplated under the Law.

28. The Constitution Bench of the Hon'ble Apex Court as reported in ***[2002] Vol. III SCC 533 Padma Sundara Rao v. State of T.N. & Ors.***, in fact, it has considered the said impact, and has held that one cannot place a fact under the given set of Law, but, rather, it will be just a vice-a-versa, that it would always be a similar set of facts which has to be tested first by the Courts, as to whether, a particular set of Law, on which a reliance is placed, would at all fit into under the facts or not, because different facts and circumstances of the case and a unified principle of judicial precedence will not be applicable, as it has been sought to be applied by the Learned Senior Counsel for the Appellant on the basis of two

Judgments, that he had relied upon to substantiate his argument, pertaining to the Locus of the present Appellant to challenge the Impugned Order of 08.05.2024, as rendered in IA (IBC) / 897 / 2024.

29. In view of what has been referred to above, this Tribunal is of the view that as far as the present Appellant is concerned, whose status is not in dispute as to be that of a PRA, there is no material right which is prejudiced by passing of the Impugned Order by the learned Adjudicating Authority, which could give him a cause to challenge the same by invoking Section 61 of the I & B Code, 2016, and that too, in the status of being a Prospective Resolution Applicant, where he has only expressed his interest to submit the Resolution Proposal and has not even reached the stage of submitting Resolution Proposal.

30. In view of what has been discussed above, this Tribunal is of the view that;

a) The Appellant is not at all an Aggrieved Party;

b) The Appellant does not have any cause of action, as such, as against the Impugned Order, in the status of his being a Prospective Resolution Applicant;

c) By way of a reiteration, it is observed that in the light of the Constitution Bench Judgment, the ratio of Judgments relied by the Learned Senior Counsel for the Appellant will not apply, since, being based upon

altogether different facts and circumstances, which are not akin to the case at hand.

Thus, the Company Appeal (AT) (CH) (INS) No. 206 / 2024 lacks merit and the same is accordingly dismissed. The connected pending Interlocutory Applications, if any, are closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SR / TM