NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS) No.91 of 2021
(Under section 61 of Insolvency and Bankruptcy Code, 2016)
(Arising out of the Order dated 18.01.2021 passed in IA/294/2020 in CP/193/2018 by the National Company Law Tribunal, Division Bench (Court-1), Chennai)

In the matter of:
S. RAMUTHAI,
W/o. C. Somaiah Nadar,
No.2/119, Middle Street,
Kappalur,
Madurai-625 008. …Appellant

V.

1.M/s.P dot G Constructions Private Limited,
P dot G 8 Square,
No.26, Sapthagiri Nagar,
Valsaravakkam, Chennai – 600 116. …Respondent No. 1

2.Sundaresan Nagarajan,
IBBI/IPA-001/IP-P00418/2017-18/10741,
Resolution Professional,
M/s.P dot G Constructions Private Limited,
7th Floor, KRD GEE Crystal,
91-92, Radhakrishnan Salai,
Mylapore, Chennai – 600 004. …Respondent No. 2

Present:

For Appellant : Mr. Ragavendran Advocate

Judgment
(Virtual Mode)

I.A.No.174/2021 in Company Appeal (AT)(CH)(INS) No.91/2021

1. Heard the Learned Counsel for the Petitioner/Appellant in I.A.No.174 of 2021 in Company Appeal (AT)(CH)(INS) No.91 of 2021.

2. The Learned Counsel for the Petitioner/Appellant submits that the certified copy of the 'Impugned Order' dated 18.01.2021 passed in IA/294/2020 in CP/193/2018 by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench, Court-1, Chennai) was received on 17.02.2021 and because of the ill health of the Petitioner/Appellant,

she could not travel to Chennai and instruct her Learned Counsel to file the present 'Appeal'. Added further, some of the Papers, which were required for filing the present Appeal were not readily available with the Learned Counsel, which were misplaced in the Counsel's office. Later, the papers were recovered and after rearranging the same, the present 'Appeal' has been filed with a delay of 14 days, which is neither wilful nor wanton, but due to the aforesaid reasons.

3. Taking into consideration, the instant 'Appeal' was filed beyond 30 days, in terms of Section 61(2) of the I & B Code, 2016 and in as much as the Petitioner/Appellant has come out with a reason that due to her ill health, she could not travel to Chennai and instruct her Learned Counsel to prefer the 'Appeal', etc. this 'Tribunal' on being subjectively satisfied as to the reasons mentioned in IA/174/2021 in Company Appeal (AT)(INS) No.91 of 2021 condones the delay of 14 days in issue, in furtherance of substantial cause of justice. Accordingly, IA/174/2021 in Company Appeal (AT)(INS) No.91 of 2021 is allowed. No costs.

4. The Learned Counsel for the Appellant submits that the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench Court-1, Chennai) had dismissed IA/294/2020 in CP/193/2018 on 18.01.2021 (filed by the Appellant as Petitioner) while among other things observing that ……… "since the filing itself is done on 18.02.2020, much after the approval of the Resolution Plan, this Tribunal is of the view that this Application cannot be entertained seeking for admission of the partial Claim, which has been rejected by the Learned Resolution Professional, for which this Application has been preferred.

In the circumstances, we are constrained to dismiss this Application taking into consideration the decision of the Hon'ble Supreme Court of India In the matter of *Committee of Creditors of Essar Steel India Limited –Vs—Satish Kumar Gupta & Ors passed in a Civil Appeal No.8766-67 of 2019 DIARY NO.24417 of 2019,* wherein it has been specifically observed that the Resolution Applicant cannot be allowed to face hydra head suddenly popping up after the approval of the Resolution Plan in relation to the Corporate Debtor of liabilities." and that the said order is a pre-determined one, based on non-application of mind and as such, the same is an illegal one.

5. The Learned Counsel for the Appellant contends that the Appellant is a bona fide purchaser of the Flat measuring to an extent of 1092 sq.ft. bearing No.306, "B" Block, Third Floor in the project "matrix" and as per the instruction of the erstwhile management of the 1st

Respondent Company/Corporate Debtor and that the Appellant had paid a total sale consideration of Rs.28,67,560/- i.e. a sum of Rs.10,50,000/- to the 1st Respondent vide RTGS dated 19.10.2013 and a sum of Rs.18,17,560/- by way of cash on 18.10.2013. Also, that the 1st Respondent Company/Corporate Debtor had executed a Sale Deed dated 16.07.2014 and the Construction Agreement dated 14.07.2014 in favor of the Appellant.

6. According to the Learned Counsel for the Appellant, the 2nd Respondent/Resolution Professional should have admitted the claim of the Appellant in full. However, the 2nd Respondent/Resolution Professional through an e-mail dated 27.12.2018 had admitted the Appellant's claim to an extent of Rs.10,50,000/- against her total claim of Rs.28,67,560/- for the reason that the payment had not reflected in the 'Books' of the 1st Respondent and by an e-mail dated 29.01.2019, revised the admitted claim of the Appellant from Rs.10,50,000/- to Rs.11,15,520/-.

7. It is represented on behalf of the Appellant that the 'CRM Data' published by the 2nd Respondent in the website of the 1st Respondent clearly reveals that the payments were paid by the Appellant through 'Cash and RTGS'. As such, it is evident that the Appellant had paid the full sale consideration to the Respondent for the Flat in question.

8. The Appellant (as Petitioner in IA/294/2020 in CP/193/IB/CB/2018) before the 'Adjudicating Authority' [National Company Law Tribunal, Division Bench (Court-1) Chennai] had prayed for passing of an order in directing the Resolution Professional to consider her claim dated 06.08.2018 submitted under Form CA under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and to approve the same in full and include it in the 'List of Creditors' maintained by him, within the time stipulated by the 'Tribunal'.

9. The approval of Resolution Plan pertaining to the 'Corporate Debtor' was approved as early as on 13.12.2019. In reality, IA/294/2020 in CP/193/2018 was filed before the 'Adjudicating Authority'/National Company Law Tribunal, Division Bench (Court-1) Chennai, on 18.02.2020, of course, after the approval of the 'Resolution Plan' is ex facie, not maintainable in the eye of Law.

10. Be that as it may, this ‘Tribunal’, on going through the ‘Impugned Order’ dated 18.01.2021 in IA/294/2020 in CP/193/2018 passed by the ‘Adjudicating Authority’ [National Company Law Tribunal, Division Bench (Court-1), Chennai] is of the considered opinion that the conclusion arrived at to the effect that IA/294/2020 in CP/193/2018 cannot be entertained seeking for admission of partial claim after the approval of ‘Resolution Plan’ relating to the Corporate Debtor’s liabilities in the light of the Hon’ble Supreme Court decision in ‘Committee of Creditors of Essar Steel India v Satish Kumar Gupta & Ors’ (vide Civil Appeal No.8766-67 of 2019 Diary No.24417 of 2019) is free from legal flaws. Looking at from that angle, the ‘Appeal’ is devoid of merits.

11. Resultantly, the present Company Appeal (AT)(CH)(INS) No.91 of 2021 is dismissed, but without costs.

[Justice Venugopal M]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

14.06.2021
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