

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.09.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB) No.105/9/AMR/2019	IA(IBC)/108/2022 IA(IBC)/94/2022	9 of IBC	Trishla Minerals Vs Segno Ceramics Pvt Ltd

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA(IBC)/108/2022 & IA(IBC)/94/2022 are dismissed, vide separate Common Order.

SD/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

IA (IBC) No. 108/2022 & IA (IBC) No.94/2022
IN
TCP (IB) No.105/9/AMR/2019

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

*** **

IA (IBC) No. 108/2022
IN
TCP (IB) No.105/9/AMR/2019

**Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the NCLT Rules, 2016**

**In the matter of
M/s. SEGNO CERAMICS PRIVATE LIMITED**

Between:

M/s.Madhavi Edible Bran Oils Private Limited,
Represented by its Managing Director,
Registered office at D.No.31-9-60,
Bypass Road, Mandapeta, East Godavari,
Andhra Pradesh – 533308.

... Applicant/Successful Resolution Applicant

AND

1. Immaneni Eswara Rao,
Interim Resolution Professional of
M/s.Segno Ceramics Private Limited,
Flat No.301, Bhavya's Fantastika,
Road No.12, Banjara Hills,
Hyderabad – 500029.
2. Mr.Narahari Prasad Narasimha Rao,
Director (Suspended)
Registered office at Survey No.175-177/5,
Vemmavaram Village,
Ballikurava Mandal,
Prakasam District, Andhra Pradesh -523301.

... Respondents

Appearance:

For Applicant : Mr.S.Ravi, Sr. Counsel &
Mr.Naga Deepak, Advocate
For Respondents : Ms.Prabha Prasad, Advocate

IA (IBC) No.94/2022
IN
TCP (IB) No.105/9/AMR/2019

Under Section 43 of Insolvency and Bankruptcy Code, 2016

**In the matter of
M/s. SEGNO CERAMICS PRIVATE LIMITED**

Between:

Mr.Immaneni Eswara Rao,
Interim Resolution Professional of
M/s.Segno Ceramics Private Limited,
Flat No.301, Bhavya's Fantastika,
Road No.12, Banjara Hills, Hyderabad – 500029.

... Applicant/IRP

AND

1. Mr.Narahari Prasad Narasimha Rao,
Director (Suspended)
Registered office at Survey No.175-177/5,
Vemmavaram Village, Ballikurava Mandal,
Prakasam District, Andhra Pradesh -523301.
2. Mr.Sasi Kumar Chalasani,
Director (Suspended)
Registered office at Survey No.175-177/5,
Vemmavaram Village, Ballikurava Mandal,
Prakasam District, Andhra Pradesh -523301.

3. Mr.Vamsi Krishna Griddaluru,
Director (Suspended)
Registered office at Survey No.175-177/5,
Vemmavaram Village, Ballikurava Mandal,
Prakasam District, Andhra Pradesh -523301
4. Mr.Vamsi Krishna Kudaravalli,
Director (Suspended)
Registered office at Survey No.175-177/5,
Vemmavaram Village, Ballikurava Mandal,
Prakasam District, Andhra Pradesh -523301
5. Mr.Raghuvveer Gutta,
Director (Suspended)
Registered office at Survey No.175-177/5,
Vemmavaram Village, Ballikurava Mandal,
Prakasam District, Andhra Pradesh -523301

... Respondents

Date of pronouncement of Order: 20.09.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/IRP : Mr.Immaneni Eswara Rao, IRP

For Respondents : Ms.Prabha Prasad, Advocate

Per:

Justice Telaprolu Rajani, Member Judicial

COMMON ORDER IN IA(IBC) NO.108/2022 AND IA (IBC)
NO.94/2022 IN TCP (IB) NO.105/9/AMR/2019

1. This IA (IBC) No.94/2022 is filed by the Interim Resolution Professional (IRP). IA No.108/2022 is filed by the Successful Resolution Applicant (SRA). Since, the relief sought for in both the application is one and the same, they are taken up together for passing a common order.

2. The above applications are filed on the following set of facts:

Segno Ceramics Private Limited (Corporate Debtor) is a private limited Company, which was taken into Corporate Insolvency Resolution Process (CIRP) by virtue of the order dated 22.11.2019 in an application filed by Trishla Minerals who is an Operational Creditor. After the Corporate Debtor was taken into CIRP, the Interim Resolution Professional (IRP) who was appointed, took over the proceedings of the Resolution Process and received a Resolution Plan from the Successful Resolution Applicant, who is the Applicant in I.A.No.108/2022. He sought approval of the Resolution Plan before the Tribunal and the same was approved by virtue of the orders of this Tribunal dated 17.03.2021. The avoidance application filed by the Resolution Professional (RP) is on 17.12.2019 and the application filed by the Successful Resolution Applicant (SRA) is on 21.06.2022.

3. While I.A (IBC) No.94/2022 was pending, the order approving the Resolution Plan came to be passed by this Tribunal. Now the only contentious issue before this Tribunal is whether the avoidance application can be decided after the approval of the Resolution Plan.

4. The Judgments on this particular aspect have clearly ruled that once the Resolution Plan stands approved, the new management comes into picture and the Resolution Professional (RP) who ceases to be an RP on the approval of the Resolution Plan cannot move an avoidance application. A judgment of the *High Court of Delhi in 2020 SCC Online Del 1479 between M/s. Venus Recruiter Private Limited vs. Union of India and Others* was relied upon by the both sides. The Applicants to contend that the Avoidance Application cannot be taken up for decision, once the Resolution Plan is approved. The Respondents to contend that the Avoidance Application cannot be taken up, but if a provision is made in the final Resolution Plan, the NCLT would have jurisdiction to entertain and decide an Avoidance Application. At paragraph 92 of the judgment the High Court of Delhi observed as follows:

“The parties would have to be therefore left to their civil and other remedies in terms of the contract between them. The NCLT ought not to be permitted to now adjudicate the preferential nature of the transaction under a contract which now stands

terminated, after the approval of the Resolution Plan.”

The context in which the Delhi High Court observed that the NCLT has no jurisdiction to entertain and decide avoidance applications unless provision is made in the final Resolution Plan, has to be understood in the right perspective. In view of Section 26 of IBC it cannot be said that the NCLT does not have jurisdiction to entertain avoidance applications. Section 26 is extracted hereunder for ready reference:

Section 26: Application for avoidance of transactions not to affect proceedings.

“26. The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.”

5. The purport of the judgment of the High Court of Delhi is that though Section 26 permits entertainment of Avoidance Applications, the NCLT would not have jurisdiction to entertain such Application, if, no provision is made in the final Resolution Plan. It cannot be read to mean that if a provision is made in the final Resolution Plan the Avoidance Applicant can be decided even after the approval of the Resolution Plan is made. The purport is to say that if no provision is made in the Resolution Plan, inspite of there being a provision for filing an

avoidance application under Section 26 of the IBC, the NCLT would not have jurisdiction to entertain such application. The words 'also' bear great significance to understand that the NCLT would not have jurisdiction to entertain the application if no provision is made in the resolution plan. Hence, according to the above judgment, the provision in the Resolution Plan becomes a pre-condition for filing an avoidance application. Even if such an application is filed and entertained, the same cannot be decided, once the Resolution Plan is approved. Hence, the contention on the basis of which the Counsel for the Respondents seeks this Tribunal to decide Avoidance Application does not hold any merit in the context of the above understanding of the judgment of the Delhi High Court.

6. The High of Delhi in the above judgment has also more than many times reiterated and emphasised that the NCLT does not have jurisdiction to decide the avoidance application once the Resolution Plan is approved.
7. It is observed that an avoidance application for any preferential transaction is meant to give some benefit to the Creditors of the Corporate Debtor. The benefit is not meant for the Corporate Debtor in its new avatar, after the approval of the Resolution Plan. This is clear from a perusal of Section 44 of the IBC which sets out the kind of orders which can be passed

by the NCLT in the preferential transactions. The benefit of these orders would be for the Corporate Debtor. Prior to approval of the Resolution Plan any property transferred or sum acquired in an order passed in respect of the preferential transaction would have to form part of the final Resolution Plan. The Resolution Plan would have to take into consideration such amounts and benefits which can be given to the Corporate Debtor for the benefit of the CoC. The benefit of an avoidance application is not meant for the Company after the Resolution Plan is considered by the CoC and approved by the NCLT. The argument that avoidance applications relating to preferential and other transactions can survive beyond the conclusion of the CIRP is held to be contrary to the scheme of the Code.

8. The Delhi High Court, after a conjoint analysis of Section 43 and 44 read with the applicable Regulations, held that the assessment by the RP of the objectionable transactions, including preferential transactions cannot be an unending process. The timelines specified were also considered by the Delhi High Court and it was held that if the RP comes to the conclusion that the Corporate Debtor has been subject to preferential transactions, the determination has to be made by the 115th day. The RP also has to apply to the NCLT for appropriate relief on or before 135th day. It was held that the role of an RP is finite in nature, he or she cannot continue to

act on behalf of the Corporate Debtor once the plan is approved and the new management takes over. To continue an RP indefinitely even beyond the approval of the Resolution Plan would be contrary to the purposes and intent behind appointment of an RP. The Resolution Professional as the name itself suggests has to be a person who would enable the resolution. The role of the RP is not adjudicatory but administrative in nature.

9. Thus, the RP cannot continue beyond an order under Section 31 of the IBC, as the CIRP comes to an end with a Successful Resolution Plan having been approved. But however, it was noted that if there is a clause in the Resolution Plan permitting the RP to function for any specific purpose beyond the approval of the Resolution Plan then the RP continues to function for that specific purpose which is not the case herein. The Delhi High Court also considered Section 26 of IBC and held that Section 26 of IBC cannot be read in a manner so as to mean that an application for avoidance of transactions under Section 25(2)(j) can survive after the CIRP. Once the CIRP process itself comes to an end, an application for avoidance of transactions cannot be adjudicated. The purpose of avoidance of transaction is held to be clearly for the benefit of the creditors of the Corporate Debtor. No benefit would come to the creditors after the plan is approved. It also held that Form-

H cannot come to the aid of the Avoidance Applications to remain pending beyond the CIRP process.

10. It further held that if an avoidance application for preferential transactions is permitted to be adjudicated beyond the period after the Resolution Plan is approved, in effect, the NCLT would be stepping into the shoes of the new management to decide what is good and bad for the Company. Once the plan is approved and the new management takes over, it is completely up to the new management to decide whether to continue a transaction or agreement or not. Thus, if the CoC or the RP are of the view that there are any transactions which are objectionable in nature, the order in respect thereof would have to be passed prior to the approval of the Resolution Plan. Hence, it is very clear from the above cited judgment that once the Resolution Plan is approved the NCLT ceases to have jurisdiction to decide the avoidance applications.
11. The other judgments relied upon by the Counsel for the Respondents are rendered by Kochi Bench in TMA/42/KOB/2019 in CP(IBC) No.689/CB/2017 and by the NCLAT in 2021 SCC Online NCLAT 553. Both the judgments have categorically held the same.
12. The argument of the Senior Counsel is that Section 26 permits filing of an avoidance application and says that the filing of an

avoidance application shall not affect the proceedings of the CIRP would imply that avoidance applications cannot be dismissed on the mere approval of the resolution plan. He argues that when an application is permitted to be filed before the Tribunal, saying that it cannot be decided after the approval of the Resolution Plan would be an anomalous interpretation. This court also perceives some anomaly in the said provision and finds the argument weighty. Even according to the judgment of the Delhi High Court an avoidance application can be entertained if a provision is made in the Resolution Plan. But when once the Resolution Plan is approved while the avoidance application is pending, saying that then the avoidance application cannot be decided, would make the permission given under section 26, to file the avoidance application redundant. But however, in view of the law which is laid down by various High Courts and the Supreme Court, this Tribunal cannot resolve the said anomaly by going beyond the law laid down by the Supreme Court and various High Courts. It is for the legislature and the competent courts to resolve the said anomaly. Hence, I.A.(IBC) No.108/2022 and I.A.(IBC) No.94/2022 in TCP(IB) No.105/9/AMR/2019 are dismissed.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Svamy Naidu